



24 CFR Parts 91, 570, and 1003

[Docket No. FR-6148-P-01]

RIN 2506-AC52

Submission for Community Development Block Grant Program, Consolidated Plans, and Indian Community Development Block Grant Program Changes

AGENCY: Office of Assistant Secretary for Community Planning and Development and Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: HUD is proposing to revise the Community Development Block Grant (CDBG) and related Section 108 loan guarantee program regulations to make it easier for recipients to promote economic development and recovery in low- and moderate-income communities and support investments in underserved areas. This proposed rule also would revise provisions related to Consolidated Plan and citizen participation requirements for the CDBG program and institute quarterly reporting to improve performance with respect to timeliness. HUD is also proposing to make certain corresponding changes to the Indian Community Development Block Grant (ICDBG) program regulations to align the ICDBG program with the revisions being made to the CDBG program regulations.

DATES: Comments are due by **[Insert date 60 days from date of publication in the Federal Register]**.

ADDRESSES: Interested persons are invited to submit comments regarding this rule.

Communications must refer to the above docket number and title. There are two (2) methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that website to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (Fax) comments are not acceptable.

Public Inspection of Public Comments. All comments and communications properly submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of all comments submitted are available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Office of Block Grant Assistance, Room 7282, U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC, 20410; telephone (202) 708-3587 (this is not a toll-free

number) for the CDBG and Section 108 loan programs. Heidi Frechette, Deputy Assistant Secretary for Native American Programs, Room 4108 U.S. Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC, 20410; telephone (202) 402-6321 (this is not a toll-free number) for the ICDBG program. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301-5320) (hereinafter “the Act”) establishes the CDBG and complementary Section 108 loan guarantee (Section 108) programs, and the ICDBG program. HUD’s regulations implementing: (1) the Consolidated Plan and citizen participation requirements governing the CDBG program are located at 24 CFR part 91, entitled, “Consolidated Submissions for Community Planning and Development Programs;” (2) the CDBG program are located at 24 CFR part 570, entitled “Community Development Block Grants;” and (3) the Section 108 program are located at 24 CFR 570 subpart M, entitled “Loan Guarantees.” The Consolidated Plan regulations were promulgated in 1994 and 1995 (60 FR 1878 and 60 FR 1943; January 5, 1994, and January 5, 1995, respectively), and amended HUD’s existing regulations to replace the then-current Comprehensive Housing Affordability Strategies with a rule that combined into a single consolidated submission the planning and application aspects of, among others, the CDBG program. The Consolidated Plan regulations reflected HUD’s view that the purpose of the Consolidated Plan submission is to enable States and localities to examine their needs and design ways to address those needs that are appropriate to their circumstances. The ICDBG program regulations, which are located at 24 CFR part 1003, entitled “Community Development Block Grants for Indian Tribes and Alaska Native Villages,” were promulgated in 1996 (61 FR 40084,

July 31, 1996), and set forth the requirements and procedures for awarding CDBG funds to Indian Tribes.

II. Background

The CDBG and Section 108 programs

The CDBG program and its loan guarantee component, the Section 108 program, are some of the most potent Federal tools for local governments to assist community and economic development. State and local governments nationwide – each State, more than 1,200 cities and counties, the District of Columbia, Puerto Rico, and four U.S. territories – rely on annual formula CDBG funds to develop meaningful projects and provide essential services that create sustainable, healthy, and prosperous communities for primarily low- and moderate-income persons. The programs' unique flexibility allows grantees to use CDBG funds, as well as Section 108 guaranteed loan proceeds leveraged from their CDBG allocations, for projects and services that meet each community's needs. As a grantee develops strategies for addressing its needs, however, it generally evaluates the viability of activities that it wishes to include in its program. It may, for example, decide that it wants to invest in an underserved area that it has determined to be a food desert. This investment could take the form of a loan to a business that would agree to construct a food store to serve residents of that area. Such assistance to a business would be subject to the CDBG national objectives criteria and public benefit standards. However, HUD has not substantively updated the national objectives criteria and public benefit standards for economic development activities carried out with CDBG, ICDBG, and Section 108 funds for over twenty years. Changes over time in market conditions, inflation, and evolving community development practices have effectively limited the types of activities grantees could carry out. As a consequence, the grantee's plans could be short-circuited by the inability or unwillingness of a business to comply with the current requirements.

The limitations under the current regulations have thus deprived grantees of viable alternatives when developing programs that would best address their needs, and in some cases

prevented communities from using CDBG funds to stimulate potentially transformative economic revitalization outcomes. By removing the impediments and disincentives to the use of CDBG funds for economic development activities, the proposed changes could result in a greater proportion of available CDBG funds being used for economic development. It does not follow, however, that spending more on economic development must result in less spending on other activities, because the additional economic development spending could be funded with loans guaranteed under the Section 108 program. For example, if a grantee wants to undertake an economic development activity but also wishes to carry out another activity, e.g., housing rehabilitation, it could use Section 108 as the funding source for the economic development activity and its CDBG allocation for the other activity. If relatively more CDBG funds are expended for economic development purposes, however, it must be presumed that such increase is the result of grantees having determined that the higher spending level is necessary and prioritized to address their local community and economic development needs.

The ICDBG program

Under the ICDBG program, HUD provides competitive grants annually to Indian Tribes to carry out eligible activities. The program regulations largely mirror the CDBG program regulations.

Lessons Learned from the COVID-19 Pandemic

HUD and CDBG grantees experienced an unusual opportunity to employ new program policies before making them part of the CDBG program's regulatory canon. The COVID-19 pandemic created a historical economic crisis resulting in the closure of small businesses, significant job loss, and other economic hardship with notable disparities in underserved communities. These exposed and exacerbated impacts and inequities that largely affected underserved persons and communities across the United States, particularly among low-income and underserved populations who were already economically marginalized and lacked housing security. Historically marginalized communities of color, particularly those in racially or

ethnically concentrated areas of poverty, disproportionately experienced disinvestment and have been denied economic opportunities. In 2020, HUD oversaw the Community Development Block Grant CARES Act (CDBG-CV) program to provide grants to States, insular areas, and local governments to prevent, prepare for, and respond to the spread of COVID-19. Lessons learned from the quick deployment of CDBG-CV accelerated the grantees' and HUD's understanding of needed program improvements.

The insights gleaned from the CDBG-CV Program informed this important but routine opportunity to update CDBG and ICDBG regulations to introduce pre-tested flexibilities, mainly related to economic development activities; is responsive to feedback from HUD communities; and is informed by the implementation of CDBG and ICDBG over the past several decades. The new regulatory flexibilities implemented with \$5 billion in CDBG-CV for communities revealed longstanding hindrances to long-term economic growth, particularly for low- and moderate-income persons.

The flexibilities, waivers and alternative requirements introduced through CDBG-CV for Economic Development Activities enabled grantees to move quickly to help small businesses, particularly for underserved communities while retaining sufficient regulatory controls to ensure program benefit is planned and delivered compliantly. This Proposed Rule enables the Federal Government to continue bolstering economic recovery through job creation while addressing economic inequities, by, for example, strengthening small businesses and investing in enduring job opportunities in underserved communities. On January 20, 2021, the President issued Executive Order 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (86 FR 7009), and in February 2023, the President issued Executive Order 14091, Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (88 FR 10825), both which call for a whole-of-government effort to advance racial equity and support underserved communities. Further, through Executive Order 14002, Economic Relief Related to the COVID-19 Pandemic (86 FR

7229), issued on January 22, 2021, the President directed Federal agencies to use their full resources to address the economic crisis, specifically to reduce unnecessary barriers and improve coordination among programs funded by the Federal Government. The approach seeks to create opportunities for the improvement of communities that have been historically underserved.

III. This Proposed Rule

Consistent with Executive Orders 13985, 14002, and 14091 and in response to changed market conditions, HUD seeks to provide authority that would allow CDBG grantees and Section 108 borrowers (hereinafter referred to collectively as “recipients”) to implement funding more effectively and efficiently in their communities.

The proposed changes also would enhance the CDBG program’s goal of primarily benefitting low- and moderate-income (“LMI”) persons while removing obstacles that prevent the use of the program in targeted areas and for economic development activities. The proposed changes will not have any impact on the allocation of CDBG funds among recipients. The changes would particularly benefit underserved communities, including historically marginalized communities of color experiencing disproportionate disinvestment and denial of economic opportunities.

The proposed rule also aims to improve data collection to measure effectiveness and improve program outcomes through more effective use of CDBG funds, while ensuring CDBG and Section 108 recipients use funds efficiently and in a timely manner to benefit their communities. The proposed rule would change national objectives criteria to remove impediments to carrying out economic development activities, update the public benefit standards to allow CDBG and Section 108 recipients greater flexibility in undertaking economic development activities, and incorporate several changes to eligible activities under the CDBG

and Section 108 programs. The proposed rule would also simplify regulations to encourage CDBG and Section 108 recipients to invest CDBG funds¹ in underserved communities.

Further, the proposed rule would make corresponding changes to the ICDBG regulations in part 1003, where appropriate, to ensure that the CDBG and ICDBG regulations continue to [align. Finally, the proposed rule would remove outdated provisions and make technical corrections.

The proposed rule could result in incentivizing investment in communities by streamlining and improving mechanisms for greater flexibility of funds to flow to economically distressed communities while signaling the Federal Government's willingness to support these investments. These investments would enable communities to encourage, build, and expand activities that revitalize communities.

A. Targeting Resources Towards Communities with the Greatest Need

HUD wants CDBG and Section 108 recipients to make greater use of CDBG funds in economically distressed communities, particularly those designated through other Federal or State programs. The proposed rule addresses aspects of 24 CFR part 570 that HUD considers to be unnecessarily cumbersome to economic development activities and otherwise proposes to revise or add additional flexibility for CDBG and Section 108 recipients in facilitating economic development. The proposed rule would make it easier for CDBG and Section 108 recipients to carry out job creation and retention activities while reducing recordkeeping burdens on CDBG and Section 108 recipients and assisted businesses² alike. HUD has re-envisioned the public benefit standard and proposes to simultaneously remove disincentives for economic development, add flexibility in demonstrating public benefit, and update standards to reflect current and future market conditions. HUD believes these proposed changes would provide

¹ As the term "CDBG funds" is defined at § 570.3 to include Section 108 guaranteed loan funds, references to use of "CDBG" funds or "CDBG"-assisted activities in this preamble also applies to Section 108 guaranteed loan funds unless otherwise noted.

² An assisted business receives CDBG and/or Section 108 guaranteed loan funds from a recipient to carry out an eligible activity, and must comply with CDBG and/or Section 108 requirements.

CDBG and Section 108 recipients with a greater ability to support business development and assist States and local governments in bolstering job creation.

National Objectives Criteria³

HUD's regulations at §§ 570.208,⁴ 570.483,⁵ and 1003.208 provide the criteria for determining whether a CDBG-, Section 108-,⁶ or ICDBG-assisted activity complies with one or more of the national objectives. CDBG recipients must use at least 70 percent of their CDBG funds for activities that benefit LMI persons. An activity may meet the LMI national objective through providing benefit to residents of a particular geographic area, serving a limited clientele, supporting housing activities, or creating or retaining permanent jobs. Additionally, CDBG and Section 108 recipients may meet a national objective by using funds for activities that aid in the prevention or elimination of slums or blight or that meet an urgent community development need. However, the current criteria, including presumptions, are unnecessarily complicated and outdated and can impose substantial burdens on prospective CDBG and Section 108 recipients and assisted businesses. Similarly, the regulations for activities that assist in the prevention or elimination of slums or blight restrict the ability to use CDBG funds for certain types of activities in such areas. HUD therefore proposes the following changes.

Low- and Moderate-Income Criteria – Creating or Retaining Jobs

The most widely used national objective for economic development activities under the CDBG program is the creation or retention of permanent jobs where at least 51 percent of those jobs, computed on a full-time equivalent basis, involve the employment of LMI persons. To demonstrate compliance with the LMI job creation/retention national objective (§§

³ This preamble divides the discussion of proposed changes to § 570.208 into multiple sections. In this “Targeting Resources Towards Communities with the Greatest Need” section, the preamble discusses proposed changes to §§ 570.208(a)(4) and (b) and 570.483(b)(4) and (c) because the proposed changes affect primarily economic development activities.

⁴ 24 CFR Part 570 Subpart C – Eligible Activities (§§ 570.200-570.210) applies to CDBG entitlement recipients and Section 108 borrowers.

⁵ 24 CFR Part 570 Subpart I – State Community Development Block Grant Program (§§ 570.480-570.497) applies to States, nonentitlement public entities receiving Section 108 guaranteed loan funds assistance, and units of general local government in a State's nonentitlement areas that receive CDBG funds.

⁶ Nonentitlement public entities receiving Section 108 guaranteed loan funds may be subject to 24 CFR 570.480 through 24 CFR 570.497.

570.208(a)(4), 570.483(b)(4), and 1003.208(d)), the activity must be designed to create or retain jobs where at least 51 percent of those jobs are held by or made available to LMI persons. For the retention of jobs, the recipient must also demonstrate that the jobs would be lost without CDBG assistance, and the jobs are known to be held by LMI persons and/or the job(s) can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that the job(s) will be filled by or made available to LMI persons upon turnover. The primary CDBG-assisted activity that uses these national objectives criteria is a special economic development activity carried out under § 570.203 for Entitlement Communities and activities under section 105(a)(17) of the Act by units of general local government in a State's nonentitlement areas.⁷ These criteria may also be met by other CDBG-assisted activities, such as assistance to microenterprises under § 570.201(o) or § 570.483(c)(1).

Based on programmatic experience, documenting whether a job is held by or made available to an LMI person can present a financial and administrative burden on recipients due to the data that recipients must gather and collect from assisted businesses. To help alleviate this burden, HUD is proposing to make changes to the presumptions provided in current §§ 570.208(a)(4)(iv), 570.483(b)(4)(iv), and 1003.208(d) (with references to, respectively, §§ 570.208(a)(4)(v) and 570.483(b)(4)(v)) to add a presumption based on the location of an assisted business. Revising the criteria for the presumption would significantly clarify the standards for recipients and encourage greater use of CDBG and ICDBG funds for job creation and retention activities in LMI areas.

The proposed revised regulations accomplish these goals by: (1) standardizing the presumptive poverty rate with the same standard as was generally required to designate areas as economically distressed⁸ (2) requiring recipients to use poverty rates based on American

⁷ 24 CFR part 570, subpart I – State Community Development Block Grant Program (§§ 570.480-570.497) applies to States, Section 108 borrowers, and units of general local government that receive CDBG funds.

⁸ Census tract poverty rate of 20 percent.

Community Survey⁹ (ACS) data, instead of only from the most recently available decennial census; and (3) removing the higher poverty requirement for central business districts, which is not required by statute; this will encourage investments in economically distressed communities, particularly with central business districts that serve as hubs of economic activity. Further, other proposed revisions to the LMI jobs national objective would improve readability and remove references to outdated programs.

Question for comment #1: Would the proposed revised presumption encourage recipients to increase their use of funds for economic development activities? Would the reduced burden on businesses be a significant or decisive factor in encouraging them to use CDBG funds for projects in underserved communities? What is the anticipated effect of eliminating the higher poverty requirement and the other poverty-related policies on private business investment in communities that lack access to opportunity? What are the trade-offs between reaching more areas and having less targeting if the neighborhood poverty threshold is reduced from 30 percent to 20 percent? What other incentives could CDBG recipients establish that would encourage investment in communities, including historically marginalized communities of color, that have historically not received CDBG-funded investment or that experience relatively low private sector investment? How might HUD better encourage economic development in underserved communities, including historically marginalized communities of color, who have had disproportionately experienced disinvestment and have been denied economic opportunities?

Modifying Prohibition on Assisting Relocation

HUD proposes to revise the definition of labor market area (LMA) to allow CDBG grantees and Section 108 recipients more flexibility in providing assistance to relocating businesses. Currently, §§ 570.210(a) (for CDBG entitlement recipients) and 570.482(h) (for States) prohibit grantees from directly assisting businesses that relocate from one LMA to

⁹ HUD chooses to use ACS data which provides poverty rates determined by Census Bureau data provided by HUD. This data set includes linkages between HUD's administrative records and a range of information, spanning race to employment status. This enables HUD to use a more cost-effective approach to match its data assets.

another if the relocation is likely to result in a significant loss of employment in the LMA from which the relocation occurs. Sections 570.210(b)(2) and 570.482(h)(2)(ii) also prevent communities from combining metropolitan LMAs or metropolitan LMAs with non-metropolitan LMAs so that they can provide assistance to a business that relocates within a (combined) LMA. This revision leaves the prohibition intact but provides CDBG and Section 108 recipients with greater flexibility (through revisions of §§ 570.210(b)(2) and 570.482(h)(2)(ii)¹⁰ allowing combination of LMAs) to stay in compliance with requirements.

While the prohibition in §§ 570.210(b)(2) and 570.482(h)(2)(ii) is intended to prevent communities from using CDBG funds to “shift” jobs from other communities, it has on balance made it unnecessarily difficult for grantees to provide assistance to businesses even when relocation would not necessarily cause job losses in another community. The definition of LMA (as defined by the Bureau of Labor Statistics) has changed multiple times since HUD instituted the prohibition in 2006, the boundaries of LMAs have changed, and some communities have fallen outside the definitions of both metropolitan and non-metropolitan LMAs. Further, logistics and supply chain changes and developmental changes across communities could allow businesses to retain jobs within a newly defined LMA within commuting distance of the old location (thus not poaching jobs from another community).

For example, a business with a processing plant in a metropolitan LMA received a code enforcement violation that required the business to either expand the plant to remedy the violation or relocate. Since the business was in a denser metropolitan area, it did not have the space to expand the plant. The business identified a location within commuting distance of the plant in an adjacent non-metropolitan LMA. The State CDBG grantee wanted to provide assistance through the non-entitlement unit of general local government to the business as part of the relocation but was prohibited by § 570.482(h)(1) because the relocation would have resulted in job loss in the metropolitan LMA from which the relocation would have occurred. The

¹⁰ These regulations implement the anti-pirating provisions in section 105(h) of the HCDA, added in 1998.

business could not find other assistance to relocate the plant, and as a result had to close the plant and terminate the jobs at the plant.

Therefore, HUD proposes to allow grantees to combine a metropolitan LMA and a non-metropolitan LMA if the relocation is necessary for business reasons such as code enforcement compliance, or expansion. This would allow CDBG grantees to provide assistance to businesses for relocation for valid business reasons while still preventing communities from poaching jobs from nearby communities.

Prevention or Elimination of Slums or Blight

HUD also proposes to revise the criteria for activities that address slums and blight on an area basis. Some of the criteria for activities to address slums or blight on an area basis are subjective and difficult for HUD to verify and monitor. The proposed revisions to §§ 570.208(b)(1)(ii) and 570.483(c)(1)(ii) would allow the recipient to determine the type of objectively verifiable data that demonstrates that the area is experiencing physical or economic distress, such as abandoned properties and properties with known or suspected environmental contamination. The proposed rule also would update recordkeeping requirements for this revision at § 570.506(b)(8)(ii).

For activities that address slums or blight on a spot basis, the proposed revisions at §§ 570.208(b)(2) and 570.483(c)(2) would remove the requirement that rehabilitation activities be limited to eliminating conditions detrimental to public health and safety. HUD has interpreted “detrimental to public health and safety” to mean that the condition must pose a threat to the general public. This requirement presents a major hurdle for recipients seeking to address slums and blight in their communities because it limits rehabilitation activities that recipients can carry out.

For example, a recent Section 108 applicant sought to redevelop a blighted former hotel into a modern mixed-use commercial and residential development; the project required extensive environmental remediation. However, the requirement that rehabilitation activities eliminate

conditions detrimental to public health and safety prevented the applicant from allocating CDBG funds toward uses of the project because the conditions were contained within the blighted site and therefore did not pose a threat to the general public. Although the applicant was eventually able to allocate CDBG funds to meet the criteria, it was unnecessarily difficult, and the restriction threatened to prevent the applicant from being able to fill the project's financing gap with Section 108 funds.

Question for comment #2: Relative to current requirements, would the proposed revision encourage recipients to carry out activities in underserved and blighted communities and therefore allow recipients to assist economic development in areas most in need of jobs and economic revitalization? If the proposed revision does not encourage recipients to carry out activities in underserved and blighted communities, please explain why and share possible alternative standards that might more effectively balance HUD's goal of enabling recipients broader flexibility with using funds for remediation while still ensuring funds are allocated in a manner that broadly benefits the general public.

Documentation of National Objectives Criteria Compliance – Creation or Retention of Jobs. § 570.506

Section 570.506 (for entitlement CDBG and Section 108 recipients) requires each recipient to establish and maintain records sufficient to enable HUD to determine whether the recipient has met applicable requirements, including whether activities meet the criteria for national objectives at § 570.208. Recipients may meet those criteria by carrying out activities (e.g., economic development activities) that benefit LMI persons based on the creation or retention of jobs. The recipient must maintain information on the size and annual income of the person's family, except for activities presumed to benefit LMI persons based upon the census tract where the person resides or in which a business is located. Currently, this information is gathered primarily by the assisted business from employees and their family members. HUD does not prescribe methods for documenting LMI status, so they will vary by grantee (as to the

information it requires the business to collect) and by business (ranging from self-certification to externally provided information).

The proposed rule would make two changes to the documentation requirements at § 570.506 to reduce the burden on businesses in documenting jobs held by or made available to LMI persons. First, HUD proposes to clarify that the recipient, instead of the assisted business, may collect information regarding the size and annual income of the person's family to document compliance with the national objective for economic development activities (HUD notes that the recipient may still choose to require that the assisted business collect the data if it prefers). Second, HUD proposes to allow the recipient to substitute records (such as, for example, a certification by the assisted business) showing the annual wages or salary of the job claimed to be held by an LMI person in lieu of maintaining records of the person's family size and income to reduce the information collection burden. Absent evidence to the contrary,¹¹ HUD will consider a job applicant/taker income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family. HUD already provides similar options to CDBG-Disaster Recovery (CDBG-DR) grantees.¹²

As an example of how this would change how potential LMI jobs are evaluated, under HUD's current policy if an assisted business employed an individual at an LMI-eligible wage, but that individual lived in a family with multiple incomes that, in total, exceeded the LMI-eligibility threshold, then the recipient would not be able to claim that the individual was in an LMI-created or retained job. However, under our proposal, a recipient would now be able to demonstrate eligibility simply through examining the income provided by the job instead of the income received by the job-holder's family. As a result, the assisted business would now be able

¹¹ Such as, for example, evidence that might be brought to HUD's attention based on audits or HUD monitoring.

¹² This approach was pioneered in collaboration with the State of New York after 9/11/2001 and honed further in 2006 after Katrina with the five Gulf Coast States. It has remained in continuous use in CDBG-DR and CDBG-CV and reduced burden substantially for businesses and the grantee while enabling sufficient documentation to support conclusions that at least 51 percent of jobs created or retained are LMI. (It is key to note that 100 percent is not the goal here.) Despite multiple OIG audits reviewing these programs, no findings have emerged bearing on issues with this approach. Given the track record, the main program has probably been overly conservative in not adopting this approach sooner.

to claim this individual was in an LMI-created or retained job. HUD notes that while this may, on the margins, result in certain jobs being newly identified as LMI, overall HUD expects this change will substantially reduce burden on documenting these jobs while broadly still identifying the same set of jobs. Moreover, working at the business/position level has the added advantage for auditors of allowing cross checking with State labor databases, which may allow for improved oversight.

This clarification and alternative method would streamline the documentation process, reduce the burden on assisted businesses, and remove a disincentive to use CDBG funds for job creation and retention activities. Presently, the burden of collecting information on family income often falls on the businesses assisted with CDBG funds. Recipients are typically more willing and better equipped than the assisted businesses to collect information regarding the size and annual income of the person's family. This burden operates as a disincentive to many businesses that would otherwise be willing to partner with recipients to carry out job creation and retention activities.

Other entities that receive funding from CDBG recipients to carry out activities, such as non-profit subrecipients, are typically viewed as "standing in the shoes of the grantee" and, as such, are required to fulfill the responsibilities that would otherwise belong to the grantee. Businesses, on the other hand, are not subrecipients and typically are inexperienced in executing the functions required of a grantee or a subrecipient, such as collecting income data on family members (i.e., non-employees). Because a business lacks such experience, it often views itself as ill-equipped to perform those functions and is more likely to decline participation in economic development projects. The changes to the documentation requirements for economic development activities address the unique status of businesses in the CDBG program's compliance framework and increase the likelihood that grantees can successfully implement community and economic development strategies.

Question for comment #3: Are the proposed changes to the regulations, such as simplifying recordkeeping requirements, enough of an incentive for recipients to use CDBG funds for economic development activities? Would the reduced burden on businesses encourage them to carry out economic development projects with CDBG funds in underserved communities? Because most grantees provide one-time assistance (such as a loan or grant) to each assisted business and because the wage for the job to be filled must be sufficient to allow the business to attract and retain the employee it needs, HUD does not anticipate this provision will produce any wage pressures. However, would the proposed change to substitute wage information for records of family size and income incentivize employers to keep wages at or below LMI levels in order to qualify for assistance? Are there alternative ways that might HUD better encourage economic development in underserved communities, including historically marginalized communities of color, particularly racially or ethnically concentrated areas of poverty, who have disproportionately experienced disinvestment and have been denied economic opportunities?

Special Economic Development Activities § 570.203

Section 570.203 governs the use of CDBG funds for special economic development activities and includes an illustrative list of eligible forms of assistance to private for-profit businesses. Section 570.203(b) already lists forms of support by which recipients can provide assistance to private, for-profit businesses where the assistance is appropriate to carry out an economic development project. HUD has previously interpreted this provision to allow CDBG assistance to New Markets Tax Credit (NMTC) investment vehicles. The proposed revisions would explicitly allow recipients to provide assistance to an economic development project through a for-profit entity that passes the funds through a financing mechanism (e.g., Qualified Opportunity Funds and NMTC investment vehicles). This clarification would make clear that such assistance through a financing mechanism is not limited to NMTC investment vehicles and is eligible under § 570.203(b). Many economic development activities are carried out in

conjunction with other forms of assistance and Federal tax benefits that provide additional sources of financing for economic development, particularly in LMI areas. HUD wants to facilitate the use of CDBG funds by recipients to fill financing gaps that cannot be met by other sources and launch critical economic development projects, particularly in underserved communities with a history of disinvestment, by eliminating the time to seek additional clarification from HUD on activity eligibility for individual projects to streamline the process for use of CDBG funds.

HUD proposes to clarify at § 570.203(c) the types of eligible job training or employment services. Currently, to be eligible as an economic development service under § 570.203(c), the job training or employment support services must be provided to or involve specific job positions resulting from the assistance being provided. HUD has discovered numerous situations in which grantees have provided CDBG funds for general employment readiness programs (such as interviewing skills or resume-writing classes) and attempted to categorize such classes as economic development services. To be eligible economic development services, the beneficiaries must either have been selected for or be under active consideration for specific job positions. If the individuals are not receiving training for specific positions at a specific business, general employment readiness programs or trainings for individuals in career fields are eligible only as public service activities or, in limited cases, as part of a § 570.204 community economic development project carried out by a Community-Based Development Organization.

HUD notes that it is not proposing any changes that would expand microenterprise assistance under § 570.203. Section 570.201(o) of the Code of Federal Regulations and section 105(a)(22) of the Act provide thorough avenues for CDBG grantees to assist microenterprise activities; likewise, sufficient authority currently exists for Section 108 borrowers to assist many microenterprise activities through economic development activities authorized under § 570.203(b).

Section 570.209 contains guidelines and standards for carrying out economic development activities under § 570.203 and, in some instances, § 570.204.¹³ The recipient is responsible for ensuring that at least a minimum level of public benefit is obtained from the expenditure of CDBG funds. HUD has discretion in identifying and determining the nature of the public benefit and their standards for measuring their acceptability. The changes proposed for the public benefit standards are based on feedback and experiences of recipients for the past thirty years. The public benefit standards set forth the types of public benefit that will be recognized and the minimum level of each that must be obtained for the amount of CDBG funds used. CDBG recipients must meet standards for their aggregated activities during the program year as well as for each individual activity. The current regulations provide two options for meeting the aggregate and individual standards: creating or retaining permanent jobs or providing goods or services to LMI residents of the area served by the activity. For activities addressing public benefit through creation/retention of jobs, the maximum amount of CDBG/Section 108 assistance per full-time equivalent (“FTE”) job for activities in the aggregate is \$35,000; for individual activities, the maximum is \$50,000. For activities providing goods or services to residents of an area (e.g., grocery stores, laundromats, food banks, pantry items, drug stores), the maximum amount of CDBG/Section 108 assistance per LMI person served for activities in the aggregate is \$350; for individual activities, the maximum is \$1,000.

HUD established these standards in 1995 as required by section 806(a) of the Housing and Community Development Act of 1992 (the “1992 Act”) (Pub. L. 102-550, 106 Stat. 3672). This provision of the 1992 Act required HUD to establish by regulation guidelines to assist CDBG recipients to evaluate and select economic development activities for assistance with CDBG funds. Subsequent inflation has resulted in CDBG funds no longer supporting the same proportion of the costs of creating and retaining jobs as they did when HUD created the

¹³ For recipients under subpart I, § 570.482(f) applies to activities pursuant to sections 105(a)(14), (15), and (17), and certain activities eligible under section 105(a)(2) of the Act.

standards. This precludes recipients from using CDBG funds for some economic development activities and has made recipients increasingly less able to feasibly implement economic development activities. For example, in program year 2012, approximately \$238 million in CDBG funds were used to support almost 2,000 economic development activities, whereas, by 2022, only \$69 million in CDBG funds were used to support about 1,100 economic development activities. Further, HUD believes the two options do not provide recipients enough flexibility in demonstrating a public benefit.

The proposed changes re-envision the public benefit standards for economic development activities and would allow recipients to better support business development, stimulate job growth, and provide needed goods and services to LMI persons. HUD can facilitate economic development while simultaneously furthering the purpose of the 1992 Act through the following proposed reforms to the public benefit standards: (1) eliminating the aggregate standard; (2) raising the individual standard to \$100,00 per full-time equivalent, permanent job created or retained and \$2,000 per LMI person to whom goods or services are provided by the activity; (3) adding an alternative standard which HUD must approve in writing whereby recipients can demonstrate that the activity would create a significant public benefit despite not meeting the jobs or services standards (such as being part of a hazard mitigation and climate change resilience strategy for an LMI area, supporting critical infrastructure, or meeting a community benefit defined or described in the requirements governing another Federal program); and (4) providing Section 108 applicants the option to allow HUD to calculate the cost of an economic development activity on a net present value basis to more accurately reflect the lower cost of an activity funded with a loan (which generates a return of the original CDBG outlay) versus an activity that involves a grant or other form of subsidy.

First, HUD's proposal to eliminate the aggregate standard at §§ 570.209(b)(1) and 570.482(f)(2) stems from the disincentive it has created to use CDBG funds for economic development and because it is burdensome beyond any observed benefit. (The Public Benefit

Standards are applied to the average of the expenditures for the activities funded over a 12-month period.) In particular, recipients with low-volume economic development programs effectively apply the aggregate standards to individual activities in an effort to reduce the risk of failing to comply. In other words, the original intention to an aggregate standard was to give recipients flexibility to occasionally target activities that were more costly. That flexibility has not worked out in practice.

For example, a grantee may identify a high-impact project at the beginning of its program year that would create one job per \$50,000 of CDBG assistance; however, local market conditions could make it difficult to predict how many other economic development activities would be assisted and how many jobs would be created. Faced with this uncertainty, the grantee may hesitate to provide funds to the high-impact project for fear of not meeting the aggregate standard. This scenario reflects how the aggregate standard restricts the ability of recipients to leverage CDBG funds for high-impact investments in their communities, particularly through Section 108 loan guarantees, because providing funds at the maximum level of the individual standard for one activity would require funding other economic development activities at public benefit levels significantly below the aggregate standard.

Additionally, the number of exceptions from the aggregate standard creates confusion for borrowers in planning their economic development programs, making the standard overly burdensome. (See current §§ 570.209(b)(2)(v)(A) through (N) and 570.482(f)(3)(v)(A) through (N)).

Second, HUD proposes to raise the dollar thresholds at §§ 570.209(b)(3)(i)(A) and (B) and 570.482(f)(4)(i)(A) and (B) for the individual standard. Maintaining the current standards would continue to hinder recipients' ability to use CDBG funds for future economic development activities and limit recipients' ability to leverage CDBG funds through revolving loan funds and Section 108 loan guarantees. The \$100,000 and \$2,000 amounts approximate the inflation-adjusted value of the current standards. HUD believes that updating these standards to

reflect market conditions would allow CDBG funds to be more competitive for use in economic development activities. By comparison, the Small Business Administration (SBA) 504 Loan program allows a benefit of up to \$100,000 per job created depending on the type of activity. HUD also proposes to include a provision at §§ 570.209(b)(5) and 570.482(f)(6) that would permit HUD to issue periodic notices to update those values (and the net present values for Section 108 borrowers, as described below) to reflect inflation.

Question for comment #4: Would the proposed changes encourage a recipient to target CDBG projects in underserved communities in their jurisdiction? Would the proposed individual standards more accurately reflect the amount of CDBG funds necessary to carry out job creating activities? What is the likely effect on investment in underserved areas? How might HUD better encourage economic development in underserved communities, including historically marginalized communities of color, particularly racially or ethnically concentrated areas of poverty, who have disproportionately experienced disinvestment and have been denied economic opportunities? How frequently should the standard be updated for inflation, and should HUD update the standard automatically with a self-executing inflation calculation?

Third, the public benefit standards provide a narrow choice of two measures for determining a public benefit: amount of assistance per job created or retained or amount per LMI person served by the activity. HUD believes these measures provide insufficient options to measure the public benefit a project may provide. For example, the SBA 504 Loan program offers recipients who cannot meet the minimum jobs requirement an alternative of meeting one of eighteen community development, public policy, or energy reduction measures. While HUD understands the value of having objective and uniform benchmarks for demonstrating public benefit, the current standards unduly restrict recipients' ability to demonstrate public benefit through use of CDBG funds for economic development activities. Further, CDBG assistance for small businesses may be used with funding under another Federal program (e.g., SBA) that has different standards. To provide flexibility to recipients in demonstrating such an alternative

public benefit, proposed provisions at §§ 570.209(b)(3)(iii) and 570.482(f)(4)(iii) would permit HUD to approve requests by recipients that an applicable activity demonstrates an acceptable public benefit if the activity would result in a significant contribution to the goals and purposes of the CDBG program.

Question for comment #5: How can recipients demonstrate an alternative public benefit? For example, an increasing number of communities have either used or explored using CDBG funds for critical lifeline projects that have received funding from other Federal agencies, including the U.S. Department of Energy and the Federal Emergency Management Agency. Would it be appropriate to use objectives for other Federal programs to satisfy the CDBG program public benefit standards? Should there be additional criteria for what can be considered an alternative public benefit, and if so what might they be?

Fourth, HUD proposes to add a new option for Section 108 applicants at §§ 570.209(b)(3)(ii) and 570.482(f)(4)(ii) that would address the concerns expressed by program participants regarding a disparity in treatment of economic development assistance in the form of a loan and other forms of assistance, such as grants, when measuring public benefit. When a recipient uses CDBG funds for an economic development activity in the form of a loan to a third party (e.g., a business), the loan is expected to be repaid over some term. Any repayment of that loan reduces the ultimate cost of that activity to the CDBG program. On the other hand, when a recipient uses CDBG funds to make grants to third parties, the cost to the CDBG program is the actual amount of the grant. The existing regulations Section 108 treat activities that involve loans in the same way they treat activities that involve grants: i.e., the cost of an activity is measured based on the nominal amount of the assistance provided to the third party. This treatment distorts the cost per unit of output (e.g., jobs) for an activity that provides assistance in the form of a loan because the standard fails to measure the actual cost of the activity accurately. Although HUD recognized this disparity when it first proposed the public benefit regulations, it did not provide an alternative to use of the nominal amount of the loan for calculation of the

public benefit due to the complexity of implementing an alternative methodology for use by recipients. Now, however, HUD could use the procedures and models prescribed by the Office of Management and Budget (OMB) for determining the “credit subsidy cost” to the Federal Government of making direct Federal loans to determine the cost to a grantee’s CDBG program of carrying out activities that involve loans from Section 108 recipients to third parties. These proposed procedures for determining the cost of such third-party loans through calculating the cost of the activity based on the net present value of the activity would address the concerns expressed to HUD by recipients regarding measuring the true cost to the CDBG program of an economic development activity that involves a loan to a third party. HUD can address its original concern about using an alternative methodology by reserving the use of an alternative measure of public benefit to Section 108-funded activities when HUD can determine the cost of a loan to the CDBG program through using a methodology routinely applied under Federal credit programs. HUD will describe in a separate notice the procedures it will use in calculating the cost of a loan.

Question for comment #6: Would the proposed option for measuring the public benefit for loan activities on a net present value basis facilitate the use of Section 108 financing for economic development activities?

B. Improving Data Collection from the CDBG Program to Measure Effectiveness

Revision of Consolidated Plan Publication Requirements as Identified in Citizen Participation Plans §§ 91.105(b), 91.115(b)

Entitlement and State recipients must identify in their citizen participation plans how they will publish their Consolidated Plans in a manner that permits their residents, public agencies, and other interested parties an opportunity to examine their contents and submit comments. HUD expects each grantee to undertake a multifaceted approach to publication after considering the nature of the jurisdiction and its citizens. The principle for jurisdictions is to create and implement a citizen participation plan designed to get program-related information to and from

persons who will be affected by the contents of the Consolidated Plan or who may seek to participate in the grantee's programs.

HUD proposes to amend §§ 91.105(b)(2) and 91.115(b)(2) to encourage grantees to use additional forms of communication to make citizens aware of publication of the Consolidated Plan. The proposal adds methods of making the Consolidated Plan publicly accessible to persons with disabilities and provide meaningful access to limited English proficient persons, such as: e-mail; text message (SMS); social media; media advertisements; public service announcements; notifying neighborhood organizations; and placement of hard copies of the Plan in public places such as libraries and neighborhood centers, and notifications on grocery store bulletin boards. These sections illustrate new examples of optional publication methods but are not required. HUD already considers these proposed methods to be valid and useful methods of publishing Consolidated Plans and encourages grantees to update citizen participation plans to include these methods. Recipients are reminded that section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and the implementing regulations at 24 CFR part 8, which provides rights to persons with disabilities in HUD-funded programs and activities, continue to require grantees to ensure effective communication for persons with disabilities, and that Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq., and its implementing regulations, require a recipient to take reasonable steps to provide language assistance to ensure meaningful access to programs and activities for persons who are limited English proficient (LEP).

Adding Substantial Amendment Criterion to the Citizen Participation Plan § 91.105(c)

Section 91.105(c)(1) requires an entitlement grantee to identify in its citizen participation plan what it considers to be a substantial amendment to its Consolidated Plan. This provision also states that a recipient must consider a change in the use of CDBG funds from one eligible activity to another as a substantial amendment to its Consolidated Plan. However, the provision does not state that adding activities not previously listed in a recipient's Consolidated Plan or Action Plan is a substantial amendment.

Since a recipient is required to notify the public of all the activities it intends to carry out with CDBG funds, HUD proposes to clarify that adding an activity not previously identified in the Consolidated Plan or Action Plan must be considered a substantial amendment in the citizen participation plan.

Setting Quantitative, Neighborhood Level Goals in the Consolidated Plan and Measuring Performance in Reports §§ 91.215, 91.520

Section 91.215(a)(1) requires local government recipients to identify the general priorities for allocating investment geographically within the jurisdiction. HUD has observed that many grantees target some or all activities geographically. To the extent that a local government recipient chooses to target investment (as opposed to undertaking jurisdiction-wide activities), HUD proposes to require recipients to set at least one quantitative, neighborhood-level outcome goal in their Consolidated Plan and to report performance in the Consolidated Annual Performance and Evaluation Reports (CAPERs). This would enable HUD to assess local government recipients' progress in addressing housing, homeless assessment, and other identified needs on a sub-jurisdiction level and provide a richer understanding of how grant funds enable grantees to achieve local community development objectives. HUD proposes to change § 91.520(d) to require an entitlement grantee to report in the CAPER at least one quantitative, neighborhood-level outcome goal accomplishment related to one or more sub-jurisdiction priority, if established pursuant to § 91.215(a)(1).

Section 91.215(g) encourages entitlement recipients, through the Consolidated Plan, to identify locally designated areas that are being targeted for neighborhood revitalization efforts that are carried out through multiple activities in a concentrated or coordinated manner. In this rule, HUD proposes to add examples of areas that may be targeted for neighborhood revitalization efforts. These areas can include areas that were designated as economically distressed areas by the Federal Government or the State that exhibit significantly high levels of poverty or low median income, including historically underserved and marginalized

communities. HUD believes that encouraging entitlement recipients to consider targeting efforts in these areas during the planning process will result in recipients developing a more holistic understanding of the needs of these areas and how they can best use CDBG funds to revitalize such areas.

C. Improving Program Outcomes

Mixed-use Properties §§ 570.3, 570.200

Mixed-use properties have become increasingly popular as development trends across the country have encouraged locating residential units, office space, and/or commercial space on the same property and often in the same building. Section 570.200(b)(1) contains special policies governing facilities containing both eligible and ineligible uses. It allows recipients to provide funds for a public facility otherwise eligible for assistance under the CDBG program even if it is part of a multiple-use building containing ineligible uses. Recipients may also provide funds for an eligible activity in a multiple-use property (that is not a public facility), but the existing regulation lacks clarity on the circumstances when such use is permissible. This lack of clarity limits recipients from using CDBG funds for eligible activities in mixed-use properties.

HUD proposes to revise § 570.200(b)(1) to clarify that recipients can assist eligible activities if they are part of mixed-use properties that also contain ineligible uses, so long as the recipient expends CDBG funds only on the eligible use. The revised provision would continue to allow for CDBG and Section 108 guaranteed loan funds to be involved in such a project so long as there is an eligible activity that costs can be allocated to cover. While the prohibition on new housing construction is applicable for both Section 108 borrowers and CDBG recipients pursuant to § 570.207(b)(3), costs in mixed-use and mixed finance developments may be allocable under the new draft regulation and our current interpretation of the requirements. HUD expects this revision would facilitate economic development by expanding the scope of activities for which recipients can use CDBG funds. The proposed rule also would add a definition of “mixed-use property” at § 570.3.

Closeout § 570.509

HUD proposes to amend the CDBG closeout regulations at § 570.509 to conform with 2 CFR 200.344 and with the proposed modifications to timeliness at § 570.902. Under this proposal, HUD would have the flexibility to separately cancel a grantee's financial access to a grant and remove the grant's availability from the line of credit while allowing some additional time, if needed, for a grantee to meet certain program requirements, such as meeting a national objective. HUD expects that each grantee will expend all funds and close out each grant financially by the end of the eighth program year of the grant.¹⁴ Further, the proposed rule would make clear that certain requirements survive grant closeout, such as but not limited to record retention responsibilities and property management. Although the proposed changes would explicitly separate the grant programmatic closeout procedures from financial account cancellation procedures, they would not change the requirement that final annual performance reports are due within 90 days after the close of the jurisdiction's program year.

For example, a grantee uses the remainder of one grant's funds to acquire a school to convert to housing. The grantee uses funds from other sources for construction costs. Under this proposal, HUD could cancel the financial account while explicitly retaining the ability to enforce compliance with all program requirements related to the activity underway, particularly those bearing on national objectives. The regulations would continue to govern change of use requirements (e.g., investments such as community centers or parks).

HUD recognizes that there are many things that could disrupt a grantee's intended timeline for activity completion: litigation, disasters, limited construction seasons due to weather, or other extenuating circumstances. To complete all program activities, including, but not limited to, meeting national objectives and satisfying reporting requirements, grantees are

¹⁴ CDBG grant funds not disbursed from the grantee's line of credit after eight years will be cancelled and recaptured by the U.S. Department of Treasury at the end of the eighth Federal fiscal year due to statutory and regulatory requirements.

permitted to request an extension of up to two years of the six-year period of performance proposed in the *Continuing Capacity* section of this rule.

Question for comment #7: Would other or additional modifications to the closeout process ease grantee burden and ensure that HUD can confirm that grantees have met programmatic requirements prior to closeout?

D. Addressing Poor Performance

Repayment of CDBG Funds for Disallowed Costs §§ 570.495, 570.910

Sections 570.495 (for State recipients) and 570.910 (for entitlement recipients) provide corrective and remedial actions that HUD may impose on recipients when HUD identifies deficiencies in recipient performance. HUD may disallow costs if recipients expend CDBG funds for ineligible activities or for activities that do not meet a national objective, or do not comply with 2 CFR part 200, subpart E, cost principles. Currently, HUD advises recipients to reimburse their CDBG program account or letter of credit with non-Federal funds based on 2 CFR 200.405(c), which states that any cost allocable to a particular Federal award (or cost objective) under the principles provided for in 2 CFR part 200 may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards. In addition, 2 CFR 200.441 states that costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, State, Tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency.

However, part 570 does not clearly state the source of repayments as the result of such violations. The proposed rule would explicitly do so in §§ 570.495(a)(4) and 570.910(b)(5) and

would also make clear that recipients must make repayments for disallowed costs with non-Federal funds. In lieu of such repayments, HUD proposes to revise § 570.495(a)(4) and add § 570.910(c) to permit a recipient to request a voluntary grant reduction (VGR) from a current or future year's allocation of funds. VGRs have long been used in lieu of repayment, and this proposed rule would codify the policy and the procedure for requesting a VGR.

Timely Performance § 570.902

This rule proposes to revise § 570.902 to institute regular quarterly public reporting by HUD on grant progress for entitlement grantees, with each grant labeled (e.g., “first year,” “on track,” or “under target”) based on the pace of expenditure necessary to achieve grant closeout by the target date at the end of the period of performance. HUD's increase in frequency of public reports will use existing grant data to provide grantees with additional time to make adjustments to their respective programs. The public report may be used by citizens for information, grantees for management information, and HUD for risk assessment, oversight, and as a signal for technical assistance needs. HUD believes this would improve the current system of only providing timeliness feedback to grantees and HUD Field offices annually. With more frequent progress information, grantees should be able to adjust their programs more nimbly and avoid timeliness issues.

Section 104(e)(1) of the Act requires that HUD annually determine whether each CDBG grantee has carried out its activities in a timely manner. HUD must also assess whether each grantee has continuing capacity to carry out activities in a timely manner. Under the existing entitlement regulations at § 570.902, HUD measures timely performance at a single, annual point in time and communicates any issues to a grantee via letter. In accordance with the existing regulations, an entitlement grantee must meet an “all open CDBG grants” portfolio standard, requiring it to have a total undisbursed portfolio balance no greater than 1.5 times its most recent annual grant amount remaining in the line of credit. HUD conducts this test 60 days prior to the

end of the grantee's program year, and in recent years, HUD has put increased emphasis on enforcing timely expenditure using this standard.

HUD considers a grantee to have timely performance issues if its portfolio balance exceeds 1.5 times its most recent annual grant amount for two years in a row. If this happens, HUD first offers the grantee a chance for an informal consultation with program officials prior to determining a corrective action or sanction. A common course of action for HUD in cases of continued grantee timeliness issues is reducing the next year's grant allocation of a grantee.

Although the timeliness regulations and procedures comply with the statutory direction, the combination of the annual 1.5 standard with the adoption of grant-based accounting and stagnant CDBG grant amounts appears to have created an unintended – and undesired – consequence. HUD has observed grantees budget and use more funds for annual “soft” expenditures, such as code enforcement, administration, planning, public services, and salaries for activity delivery, and less funds directly assisting major brick-and-mortar activities. HUD's observations and grantee feedback indicate that HUD's enforcement of the existing timeliness standard has resulted in pressuring grantees' local funding decisions away from large brick-and-mortar activities, which characteristically deliver greater benefits but require longer expenditure timeframes. Grantees are making funding and priority decisions based less on long-term community needs than on a need to comply with the portfolio balance requirement. For example, a large Midwest city recently identified the need to comply with the 1.5 requirement as the reason for its choice to assist an activity providing sidewalk improvements in low-income neighborhoods even though it believed a better fit for its community development priorities would be a significant multi-unit, multi-structure, housing rehabilitation project. HUD has noted numerous other similar examples during informal timeliness consultations.

This concerns HUD because the objectives of the CDBG program at section 101(c) of the Act emphasize development of viable urban communities by providing suitable living environments. If the timeliness enforcement standard is causing grantees to shift funding

decisions away from activities generating long-lasting improvements, the standard undercuts the purposes of the Act.

Further, the current timeliness standard incorrectly captures both high- and low-capacity grantees. An adjusted line of credit balance in excess of 1.5 times the grant amount, measured at a point in time in the grantee's program year, is not always an indicator of poor performance. Higher-capacity grantees who try to budget substantial portions of two or more grants for a major local project are identified incorrectly by the existing standard as low-performing. These grantees do not typically exhibit non-compliance in other areas of their portfolio and their HUD Field office grant managers frequently vouch for their capacity to deliver the expected project benefits. Current timeliness requirements can discourage activities that if not for these requirements would otherwise advance statutory program objectives. Conversely, low-capacity grantees with known problems across a decade or more, have sometimes not been captured under this current requirement.

Lessons learned from implementation of other programs incorporating the CDBG framework, including the Neighborhood Stabilization Program (NSP) and other CDBG-DR appropriations, helped inform this proposal. Several versions of obligation, expenditure, and other progress standards have existed in these programs, with mixed results. For example, obligation deadlines in the first NSP funding round and some early CDBG-DR grants caused grantees to select some projects less aligned with community needs and goals. Recent CDBG-DR rules, which combine a period of performance based on actual community development practice with public tracking reports, have provided a simple, workable standard that enables local choices while enhancing transparency and accountability. The takeaway from HUD's experience with timeliness is that the enforcement mechanism influences local choices towards or away from significant construction activities and may affect the pace of grant disbursement, and that applying a new standard for CDBG grantees will better serve the purpose of the Act.

This proposal seeks to enhance oversight of timeliness while reducing pressure on grantees to fund minor, quickly implementable activities or soft costs rather than providing assistance for larger projects with more significant local community development outcomes. This approach would set a standard for a clear lack of continuing capacity for timely implementation, comply with the Act, and better accommodate eligible major construction activities. The rule would also set, for the first time, a separate standard for grantee continuing capacity (see below for further detail).

Timeliness and Program Income §§ 570.489, 570.504

Note that the rules related to the intersection of timeliness and program income would not change under this proposal. The Act and the current regulations provide that program income received by a grant recipient or subrecipient is additional CDBG funds. The regulations would continue to require that grantees use available program income prior to additional drawdown of line of credit funds. However, revolving funds are a special case. This proposed rule addresses revolving funds because some grantees have inappropriately used these accounts to simply hold program income, effectively evading timely expenditure requirements. The proposed timely expenditure standard for revolving funds is that grantees use at least one half of a fund's balance (taken at the beginning of the program year) for eligible revolving fund activities or re-program the unused amount each year. The proposed rule seeks to prevent grantees from placing program income in revolving funds indefinitely with new language at § 570.504(f) that would permit HUD to take corrective actions against entitlement grantees with inactive or excessive revolving funds. HUD also proposes to hold States accountable for ensuring that revolving funds remain active adding a new § 570.489(f)(4).

Continuing Capacity § 570.902

The current regulations do not provide a standard for determining that a grantee no longer has the continuing capacity to carry out activities in a timely manner. Although this proposed rule does not change HUD's ability to assess capacity on a case-by-case basis to determine

capacity, it would add a data-driven measure of lack of capacity: a portfolio consideration of a grantee's continuing capacity to deliver activities in a timely manner based on overall progress under multiple grants over a rolling four-quarter period rather than by a single annual snapshot of the aggregate balance. At any given time, each grantee will have up to six grants (or up to eight if a period of performance waiver is provided) available in its CDBG line of credit. Proposed § 570.902(a)(4) would provide that if any three or more of those grants are simultaneously identified as Slow Spenders for four or more consecutive quarters, HUD would determine that the grantee lacks the continuing capacity to undertake timely program activities, will provide an opportunity for an informal consultation meeting, and will then take appropriate action, including corrective action or sanction up to and including a reduction to the grant amount for the succeeding program year.

Question for comment #8: In proposing this shift, HUD is aware that the overall balance of funds in CDBG lines of credit may increase. Given the commitment to quarterly public status reports at the grant level, is this problematic? If yes, how? Also, if yes, suggest an alternate approach. If you are a grantee, will the timeliness proposal affect your local activity choices in favor of transformative or major construction projects? Additionally, the Department seeks feedback from the public, including from States, on whether it would be appropriate to apply the proposed new timeliness requirements for entitlements to States.

Criteria for National Objectives – Meeting a National Objective, Appropriate Data Source §§ 570.200, 570.208, 570.483.

The proposed rule would add a time period for CDBG-assisted activities to meet one of the three national objectives of the CDBG program. Currently, there is no time period in which CDBG-assisted activities must meet a national objective. This lack of a defined period of time for an activity to meet a national objective undercuts the primary purpose of the Act because recipients cannot demonstrate that they are using CDBG-funded activities to develop viable

urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for LMI persons.

To ensure that recipients fulfill the purpose of the Act and that CDBG-assisted activities benefit LMI persons and households, HUD proposes that activities be given six years from the initial drawdown of CDBG funds to meet a national objective or the length of the period of performance and any extension permitted under § 570.509, whichever is shorter. HUD believes that six years is an adequate time period for recipients to demonstrate that an activity will meet a national objective. HUD proposes to revise § 570.200(a)(2) requiring recipients to demonstrate that activities carried out under Subpart C meet a national objective within six years of the initial drawdown of CDBG funds for an activity.

HUD also proposes to remove multiple references in §§ 570.208(a) (for entitlement recipients) and 570.483 (for State recipients) to sources of data recipients should use in determining income characteristics, such as poverty and income levels, of potential beneficiaries or areas served. Notice CPD-19-02, published February 14, 2019 (<https://www.hud.gov/sites/dfiles/OCHCO/documents/19-02cpdn.pdf>), provides recipients guidance on using data for compliance with CDBG, CDBG-DR, and NSP grant requirements.¹⁵ The proposed rule would direct recipients to use information provided by HUD to the fullest extent feasible as opposed to the most recently available decennial census data, which may have become outdated and difficult to locate.

Question for comment #9: Is six years from the initial drawdown of CDBG funds an adequate time period to demonstrate that activities have met a national objective?

E. Clarifying the Eligible Uses of CDBG

Definitions §§ 570.3, 570.206, 570.481

Activity Delivery Costs

¹⁵ This data is based on the American Community Survey 2011-2015 5-year estimates and may be found at <https://www.hudexchange.info/programs/acs-low-mod-summary-data/>.

Recipients and subrecipients may incur costs related to carrying out specific activities eligible under §§ 570.201-570.204 and 570.703, which are typically referred to as “activity delivery costs.” Unlike program administrative costs that are eligible under § 570.206 for overall program management, coordination, monitoring, and evaluation, a recipient incurs activity delivery costs on an activity-by-activity basis. The regulations do not specifically define this term; therefore, HUD proposes to add a definition at § 570.3. HUD proposes to define activity delivery costs as the allowable costs of work performed by a recipient, subrecipient, or contractor in carrying out specific activities eligible under §§ 570.201-570.204 (for CDBG entitlement recipients) and 570.703 (for Section 108 borrowers). For example, under this proposal, a grantee could charge 20 percent of an employee's salary and related expenses (e.g., fringe benefits) to an activity provided it maintains records that support the allocation of costs to the activity. Some grantees would choose to maintain such records to ensure they do not exceed the cap on program administrative costs.

Recipients, subrecipients, and contractors must use the cost principles at 2 CFR part 200, subpart E in determining the allowability of the costs. In particular, recipients, subrecipients, and contractors must ensure that activity delivery costs consisting of staff salaries are allocable to the specific activity and adequately documented. HUD proposes a new reference in the introductions to § 570.206 to emphasize that activity delivery costs for CDBG entitlement recipients are separate from program administrative costs.

Elderly

CDBG recipients and subrecipients carry out public services that specifically benefit elderly persons. Recipients across the United States have widely varying definitions of “elderly” that they use for CDBG-assisted activities that specifically target this population. Because part 570 does not define the term “elderly,” HUD has received requests for guidance regarding the definition of elderly. Although “elderly person” is defined at § 5.100, HUD believes including the definition at § 570.3 would make clear the definition of “elderly” for certain CDBG-assisted

activities. HUD proposes to add the definition of elderly at § 570.3 that states that for activities pursuant to § 570.202, “elderly” means a person 62 years of age or older. This definition would align CDBG-assisted housing activities with other HUD programs. However, HUD would continue to permit CDBG recipients and subrecipients to define “elderly” consistent with State law to permit recipients the flexibility to carry out non-housing activities that benefit elderly persons.

Entitlement Amount

The definition of entitlement amount contains a reference to “a metropolitan city and an urban county.” Periodically, OMB issues bulletins that contain revised delineations of metropolitan statistical areas, micropolitan statistical areas, and combined statistical areas. These bulletins update OMB’s designations of metropolitan areas, counties included in metropolitan areas, and principal cities of those metropolitan areas. These principal cities usually have populations below the statutory threshold of 50,000 to become a metropolitan city but are considered principal cities of the metropolitan areas in which they are located. Therefore, HUD proposes to add the term “principal cities” as designated by OMB in the definition of “entitlement amount” at § 570.3 because HUD considers principal cities entitlement recipients that will receive a CDBG grant if they accept entitlement status.

Period of Performance

HUD proposes to add a definition of “period of performance” in §§ 570.3 and 570.481(a)(4) that would provide recipients a six-year time period to expend a grant’s funds or the length of the origin year grant's period of availability for expenditure in accordance with §§ 570.200(k) or 570.480(h), whichever is shorter, beginning on HUD’s approval of a grant agreement for a given grant. The proposed definition would apply to the proposed closeout procedures at § 570.509 and timeliness requirements at § 570.902. For Section 108 loan guarantees, the period of performance begins on the date of HUD’s guarantee of a promissory note or other obligation and confers the same six-year time limit.

Under the Federal financial rules at 2 CFR 200.211(b)(5) every Federal grant must have a designated period of performance. For CDBG grants, HUD began adopting these rules in 2015. Under CDBG appropriations, HUD has allowed the period of performance to be the statutory availability of grant funds. In general, HUD has up to three years to obligate grants, and there are five additional years of funding availability. For example, grants from the 2014 appropriation are no longer available for expenditure after September 30, 2021.

Drawing from lessons learned, HUD looked to CDBG-DR grantees' fund expenditure patterns. In developing the CDBG-DR timely expenditure expectations, HUD reviewed the spending performance of CDBG-DR grants awarded in response to disasters in 2006 and 2008. In May 2013, HUD reviewed historical data on quarterly disbursements of funds from these appropriations. This analysis concluded that most CDBG-DR-funded recovery activity is completed within three to four years, and the recovery of CDBG-DR grantees is largely complete after six years. For an average grant, the third year following grant agreement execution typically shows the peak amount of expenditures. Program experience with annual CDBG grantees, who generally have fewer challenging programs than do CDBG-DR grantees, indicates that a six-year period of performance would be generous for both entitlements and State grantees.

Question for comment #10: Is the proposed six-year period of performance an appropriate period of time to expend funds for activities under a given grant?

Overall Benefit Requirement §570.200

Section § 570.200(a)(3) currently states that entitlement recipients, non-entitlement CDBG recipients in Hawaii, and recipients of insular area funds must ensure that over a period of time specified in their certification, not to exceed three years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a), (d)(5), or (6) for benefiting LMI persons. These recipients must ensure that during their chosen period of certification not less than 70 percent of the aggregate of CDBG funds

expended during that period benefit LMI persons. This requirement is identified in the Act at section 101(c) and cannot be waived. Therefore, HUD proposes to revise § 570.200(a)(3) to reinforce that recipients may not expend more CDBG funds in a subsequent certification period to meet the statutory requirement.

Eligible and Ineligible Activities §§ 570.200, 570.201, 570.202, 570.206, 570.207, 570.703

Applicable Environmental Review Procedures in part 58

HUD proposes to make a slight revision to § 570.200(h)(1)(iii), which requires that costs and activities funded are in compliance with the environmental review procedures stated in 24 CFR part 58. There has been some confusion whether the intent of this provision is just to apply whatever part 58 requirements would otherwise apply, or to actually extend applicability of part 58 choice-limiting prohibitions even to pre-application activities that aren't prohibited under Part 58 itself. In order to clarify that this provision is not meant to add a prohibition on reimbursement of expenses for activities that began before application for CDBG, where the pre-application activities commenced prior to a completed environmental review and Release of Funds, the revision would refer to compliance with "applicable" environmental review procedures in 24 CFR part 58.

Acquisition of Real Property

Section 570.201(a) currently permits grantees to use CDBG funds to acquire real property by long-term lease. However, it does not specify the length of time that constitutes a long-term lease for the purpose of compliance with § 570.201(a). "Long-term lease" has been interpreted in various ways. The 1998 Guide to National Objectives and Eligible Activities for Entitlement Communities defines a long-term lease as 15 years or more. Consistent with this guidance, HUD proposes to add a parenthetical statement to § 570.201(a) that would clearly define a "long-term lease" as 15 years or more.¹⁶

¹⁶ Under the CDBG program, long-term leases of 15 years are considered acquisition for URA purposes and subject the URA's 49 CFR part 24, subpart B, real property acquisition requirements. See HUD Handbook 1378 Chapter 1-4.I.7 page 1-8 for more details.

Tornado Safe Shelters

Section 2 of the Tornado Shelters Act (Pub. L. 108-146; 117 Stat. 1883, enacted December 3, 2003) amended section 105(a) of the Act to permit the construction or improvement of tornado shelters for residents of manufactured housing in certain neighborhoods as an eligible activity under the CDBG program. The Tornado Shelters Act permits tornado shelters as an eligible activity if they are located in a neighborhood that (1) contains at least 20 manufactured housing units within such proximity to the shelter that the shelter is available to the resident in the event of a tornado, (2) consists predominantly of persons of low and moderate income (i.e., recipients must be able to document that at least 51 percent of the residents of the service area of the tornado shelter are of low and moderate income); and (3) is located within a State in which a tornado has occurred during the fiscal year for which with amounts to be used were made available or the preceding 3 fiscal years, as determined by the Secretary in consultation with the Administrator of the Federal Emergency Management Agency. HUD has not codified this use of CDBG funds in the regulations, but recipients may use such funds for the construction of tornado-safe shelters under the authority provided by statute. HUD proposes to add a provision at § 570.201(r) that would codify the use of CDBG funds for tornado safe shelters as an eligible activity in accordance with the statute. Since the statute requires that neighborhoods where tornado shelters are constructed or improved with CDBG funds be predominantly LMI, recipients must be able to document that at least 51 percent of the residents of the service area of the tornado shelter are of low and moderate income.

Ineligible Activities

HUD proposes at § 570.207(a)(4) to explicitly list general administrative and operating expenses of public or nonprofit entities as an ineligible activity. HUD's experience is that these entities believe that general administrative costs and operating expenses are eligible activities under §§ 570.201-570.206. However, while recipients may use CDBG funds for program administrative costs, the regulations do not allow public or nonprofit entities to do so. HUD

believes that the proposed addition of this ineligible activity, in addition to the proposed addition of the definition of “activity delivery costs” in § 570.3, would provide greater clarity to public and nonprofit entities and encourage them to use CDBG funds directly for activities (as well as for activity delivery costs). Public and nonprofit entities also cannot categorize these ineligible expenses as providing technical assistance; the proposed rule would revise the definition of “technical assistance” at § 570.201(p) to reflect that prohibition.

Use of CDBG Grant Funds for Section 108 Activities

HUD proposes to clarify eligible uses of CDBG funds for loan repayment, issuance, underwriting, servicing, and other cost associated with Section 108 activities. Although already described at § 570.705(c), HUD believes that adding a cross-reference in subpart C (with a new § 570.201(s)) may provide potential borrowers a better understanding of their ability to finance Section 108 activities with CDBG funds.

Reconstruction under § 570.202

Reconstruction of buildings or structures has been eligible for CDBG assistance since 1996. Section 105(a)(4) of the Act states that clearance, removal, reconstruction, and rehabilitation of buildings and improvements (including interim assistance and financing public or private acquisition for reconstruction or rehabilitation, and reconstruction or rehabilitation of privately owned properties, and including the renovation of closed school buildings) is an eligible CDBG-assisted activity. Buildings reconstructed with CDBG funds may be publicly or privately owned and residential or non-residential.

Unlike other parts of the CDBG regulations that explicitly state that recipients and subrecipients may use CDBG funds to reconstruct public facilities and improvements (§ 570.201(c)), privately owned utilities (§ 570.201(l)), and commercial/industrial structures as part of a special economic development activity (§ 570.203(a)), § 570.202 does not clearly identify reconstruction as an eligible activity related to housing. To make clear that reconstruction is an

eligible activity under § 570.202, HUD proposes to add the words “and reconstruction” to the introductory language at § 570.202(a).

Administrative Expenses to Facilitate Housing

The provision at § 570.206(g), Administrative expenses to facilitate housing, is no longer an eligible activity in the CDBG program because the provision applied only to units identified in a grantee’s Housing Assistance Plan (HAP). HUD discontinued use of the HAP by CDBG grant recipients in the mid-1990s. Section 570.206(g) cannot be read to just substitute costs related to the Consolidated Plan for costs formerly eligible in connection with the HAP. Therefore, HUD proposes to remove § 570.206(g) and replace it with a provision addressing how CDBG funds may be used to support eligible administrative and planning costs for the HOME Investment Partnerships Program (HOME).

Section 17 of the United States Housing Act of 1937

Section 570.206(h) refers to the Rental Rehabilitation and the Housing Development programs that were authorized by Section 17 of the United States Housing Act of 1937 (“the 1937 Act”), Public Law 75-412, 50 Stat. 888. Congress repealed Section 17 in Section 289 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (42 U.S.C. 12839) and terminated assistance to these programs. HUD therefore proposes to remove and reserve § 570.206(h). HUD similarly proposes to remove and reserve § 570.201(m), which allowed CDBG funds to be used for construction of housing under Section 17 of the 1937 Act, as well as to remove a corresponding cross-reference to § 570.201(m) at § 570.207(b)(3)(ii).

Section 108 Eligible Activities

Section 108 borrowers can undertake site preparation activities related to redeveloping real property that borrowers have acquired or rehabilitated with Section 108 funds or that is for an economic development purpose. The wording of § 570.703(f) makes it unclear that all such site preparation activities must relate to either of those two purposes. This proposed rule would clarify this requirement.

Finally, the proposed rule would remove and reserve an eligible activity, § 570.703(j), related to activities authorized under section 17(d) of the 1937 Act (42 U.S.C. 1437o(d)); such authorized activities are no longer carried out since the repeal of the statute in 1991.

Criteria for National Objectives §§ 570.208, 570.483

Timeline to Meet a National Objective

HUD seeks to ensure that the recipients use CDBG-funded activities to develop viable urban communities by providing decent housing, a suitable living environment, and expanding economic opportunities, principally for LMI persons. CDBG-funded activities that fail to meet a national objective within a reasonable timeframe undercut the purpose of the Act. HUD proposes to require at § 570.200(a)(2) that recipients demonstrate that the acquisition meets a national objective within six years of the date of the initial drawdown of CDBG funds for the activity or the length of the period of performance and any extension permitted under 24 CFR 570.509, whichever is shorter. To reinforce this requirement in the national objectives criteria sections of part 570, HUD proposes to insert the six-year timeframe to meet a national objective at §§ 570.208(e) and 570.483(g).

For example, recipients may acquire real property but fail or struggle to meet a national objective based on unforeseen circumstances. The recipient or subrecipient may acquire property with the intention of constructing a public facility such as a recreation center on the site or making infrastructure improvements where affordable housing will later be developed, but unforeseen circumstances prevent the proposed activity from occurring as planned. Rather than change the use of the real property for a purpose that will meet the planned or other national objective, the recipient or subrecipient may simply hold the property indefinitely. In this circumstance, Office of Inspector General audits have documented that the length of time between acquiring property and meeting a national objective will be excessively long.¹⁷ The

¹⁷ In 2014, the HUD OIG sampled CDBG projects and audited corresponding activities. OIG found the possibility that stalled activities did not meet a national objective compliance due to reporting problems or delayed

proposed change would ensure that activities meet a national objective in a timely manner to meet the purpose of the Act.

Low and Moderate Income – Area Benefit

To demonstrate compliance with the national objective of benefit to LMI persons on an area basis (§§ 570.208(a)(1) and 570.483(b)(1)), a CDBG-assisted activity must have a defined service area. The service area must be primarily residential, and at least 51 percent of the residents in this service area must be LMI persons. Certain exception requirements at § 570.208(a)(1)(ii) allow a threshold of lower than 51 percent in limited circumstances. When designating the service area for a CDBG-assisted activity, the service area should be accurately described and proportionate to the size of the CDBG-assisted activity. For example, a recipient cannot automatically presume a large park serves just the neighborhood in which it is located; it may serve the entire jurisdiction of the recipient. To meet the criteria at § 570.208(a)(1) or § 570.483(b)(1), the recipient must use the most recent Census Bureau data provided by HUD or conduct a survey to determine if a minimum of 51 percent of the residents in the defined service area are LMI.¹⁸ CDBG-assisted activities that often use this national objective include water/sewer installation and/or improvements, rehabilitation or construction of public facilities and improvements, acquisition and/or disposition of real property, clearance and remediation activities, and some public service activities.

Low- and Moderate-Income – Limited Clientele

To demonstrate compliance with the national objective of benefit to LMI persons-limited clientele (§§ 570.208(a)(2) and 570.483(b)(2)), a CDBG-assisted activity must: (1) benefit members of a group presumed to be LMI, as such groups are described in § 570.208(a)(2)(i)(A) and § 570.483(b)(2)(ii)(A); (2) require information on family size and income to demonstrate

implementation (resulting in stalled status). For reference, this is an example report:
https://www.hudoig.gov/sites/default/files/documents/2014-LA-1007_0.pdf.

¹⁸ HUD issued technical assistance for conducting local income surveys. For more information, please visit <https://www.hudexchange.info/programs/cdbg/cdbg-income-survey-toolkit/>.

that not less than 51 percent of the beneficiaries are LMI; (3) be restricted to low- and moderate-income persons; or (4) be of such nature and be in such location that it may be concluded that the beneficiaries of the CDBG-assisted activity are low and moderate income, as such nature and locations are described in §§ 570.208(a)(2)(i)(D) and 570.483(b)(2)(ii)(D). The LMI limited clientele national objective is often met by CDBG-assisted activities that are: restricted to children, such as tutoring and recreation programs; senior services, such as Meals on Wheels; the removal of architectural barriers; and public facilities for special populations such as the homeless and domestic violence shelters.

HUD proposes revisions to the limited clientele provision that would state the requirements more clearly and that would provide better guidance to recipients. In addition to the proposed definition of “elderly” at § 570.3, HUD proposes references to that definition at §§ 570.208(a)(2)(i)(A) and 570.483(b)(2)(ii)(A) with parenthetical statements after “elderly persons.”

Further, HUD proposes to clarify the presumed LMI group of “illiterate adults.” Some CDBG recipients have interpreted the term “illiterate adults” to mean illiterate in a person’s native language, while other recipients have interpreted it to mean adults that are illiterate in English. Neither the Act nor part 570 define illiteracy. HUD’s position at one time was that, for the CDBG program, an illiterate adult is one who is unable to read or write in any language. However, HUD has reconsidered that definition and proposes to codify HUD’s current interpretation at §§ 570.208(a)(2)(i)(A) and 570.483(b)(2)(ii)(A) that illiterate adults are adults unable to read and write in English and in their first language, if the adult’s first language is not English.

Question for comment #11: Would the proposed definition for adult illiteracy accurately reflect the presumed LMI group of “illiterate adults”?

HUD also proposes to broaden the application of the presumed LMI group of “battered spouses” to cover all survivors of domestic violence. Survivors of dating violence, sexual

assault, and stalking are categories included in survivors of domestic violence. The current category of “battered spouses” limits the presumption to spouses. However, unmarried survivors of violence may be presumed to be LMI. Therefore, HUD proposes to remove “battered spouses” from the presumed categories of LMI persons and replace it with “survivors of domestic violence” at §§ 570.208(a)(2)(i)(A) and 570.483(b)(2)(ii)(A). HUD interprets “battered spouses” to be a subcategory of “survivors of domestic violence” still presumed to be LMI under those provisions.

Furthermore, HUD proposes to interpret survivors of human trafficking to be a subcategory of homeless persons, which is presumed to be LMI under these provisions. HUD considers human trafficking, including both labor and sex trafficking, to be “other dangerous or life-threatening conditions that relate to violence against the individual or family member” under paragraph 4 of the definition of “homeless” at § 578.3. Where an individual or family is fleeing, or is attempting to flee human trafficking, that has either taken place within the individual’s or family’s primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; and the individual or family has no other residence; and the individual or family lacks the resources or support networks to obtain other permanent housing; HUD would consider that individual or family to qualify as “homeless” under the definition. By including survivors of human trafficking as a subcategory of homeless, HUD would be better able to ensure that they have access to the benefits and services necessary for their safety, protection, and basic well-being.

Finally, HUD proposes to add categories of groups of persons at §§ 570.208(a)(2)(i)(A) and 570.483(b)(2)(ii)(A) that, when served exclusively or in combination with groups of persons in other listed categories, may be presumed to benefit persons, 51 percent of whom are LMI, barring any evidence to the contrary: persons who meet the Federal poverty guidelines and persons who are insured by Medicaid. The Federal poverty guidelines, established by the Department of Health and Human Services based on poverty thresholds published by the Census

Bureau, estimate the minimum amount of income needed to cover basic needs. Medicaid coverage varies by State and other eligibility requirements, but income qualification is generally less than four times the Federal poverty guidelines. Further, while nearly all jurisdictions in the U.S. have more LMI persons than persons in poverty, in a small number of jurisdictions more persons are in poverty than are LMI. Allowing grantees to presume that persons in poverty are LMI will address such anomalies and simplify requirements across other Federal programs that also provide benefits to persons who meet the Federal poverty guidelines.

Low and Moderate Income – Housing Activities

To demonstrate compliance with the LMI housing national objective (§§ 570.208(a)(3) and 570.483(b)(3)), a CDBG-assisted residential structure must be occupied by predominantly LMI households. Unlike the other LMI national objectives, meeting the LMI housing national objective is based on households rather than individuals or families. A household is all the persons that occupy a housing unit, whether related or unrelated. Meeting the LMI housing national objectives criteria is also based on the number of housing units. Each single-unit structure must be occupied by an LMI household. In a two-unit structure, one unit must be so occupied. Where there are three or more units in a structure, a minimum of 51 percent of the households must be occupied by LMI households. CDBG-assisted activities that may meet this national objective include homeownership assistance, housing rehabilitation (single and multifamily), and acquisition of real property where a recipient or subrecipient will construct housing units using another funding source. Pursuant to § 570.207(b)(3), recipients or subrecipients may not use CDBG or Section 108 funds for new housing construction unless it is provided under the last resort housing provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.) (URA) regulations at 49 CFR part 24, it is authorized as part of direct homeownership assistance for LMI households under § 570.201(n), or a qualified Community-Based Development Organization is carrying out the activity under § 570.204.

Some exceptions permit eligible activities to meet the LMI housing national objective where less than 51 percent of multifamily units are occupied by LMI households. Such activities include assistance for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project where not less than 20 percent of the units will be occupied by LMI households at affordable rents. In addition, the proportion of the total cost of developing the project to be paid with CDBG funds must be no more than the proportion of units in the project that will be occupied by LMI households (§§ 570.208(a)(3)(i) and 570.483(b)(3)(i)). The proposed rule would add as additional exceptions substantial rehabilitation (as defined at § 5.100) and conversion of a nonresidential structure to a multifamily, non-elderly rental housing project. This change would align treatment of substantial rehabilitation with new construction for purposes of meeting the national objectives criteria for housing activities.

HUD review of Consolidated Plan § 91.500

Some recipients believe that a Consolidated Plan that is not disapproved by HUD pursuant to § 91.500(a) constitutes an approval of the eligibility of the activities for the applicable programs identified in the plan. Because the Consolidated Plan is a planning document, HUD is unable to determine that a grantee will carry out the activity in compliance with program requirements, including eligible activity requirements. Grantees may amend plans, including planned activities, at any time and amendments are not subject to HUD review. However, because the Plan describes a substantial number of activities for many different CPD programs; reviewing each individual activity within the plan for compliance would be burdensome for CPD field offices and significantly lengthen review of the Consolidated Plan and delay grantees' ability to carry out activities. CPD seeks to ensure the eligibility of activities through risk analysis and monitoring after grantees have carried out activities. Therefore, HUD proposes to add language to § 91.500(a) stating that the fact that HUD has not disapproved the Consolidated Plan does not constitute approval of the activities identified in the Plan as being

compliant with relevant program requirements and does not confer a determination of the eligibility of the activities in the Consolidated Plan.

Urban County Qualification/Requalification Process § 570.307

Currently, § 570.307 requires the Secretary to determine, after reviewing qualification documentation from an urban county, whether the county is qualified to receive CDBG funds. Each year, HUD publishes a notice, *Instructions for Urban County Qualification for Participation in the Community Development Block Grant (CDBG) Program*,¹⁹ setting forth the qualification process, which generally runs from May to September. Once urban counties complete the qualification/requalification process, they remain qualified for three successive Federal fiscal years, as stated in § 570.307(d). However, the CDBG urban county qualification process does not have a statutory or regulatory completion date. Therefore, HUD proposes to insert a provision at § 570.307(h) that would require urban counties to complete the urban county qualification or requalification process no later than September 30 of the year of qualification or requalification.

Section 217(b)(3) of title II of the Cranston-Gonzalez National Affordable Housing Act, as amended (NAHA) (42 U.S.C. 12747(b)(3)), and §§ 92.50(a) and 92.101(a)(1) require that, in order to receive a HOME formula allocation for a fiscal year as a consortium, units of general local government be qualified/requalified as consortia in accordance with HOME requirements by the last day of the prior fiscal year, which is September 30 of each year. Most urban counties and HOME consortia select the same three-year qualification period to simplify the qualification process for both entities, and HOME consortia may change their three-year qualification cycles so that they coincide with the urban county's three-year qualification period. Because the CDBG program does not currently have a deadline to complete the process, however, an urban county that is also a HOME consortium may not complete the qualification process for the consortium by September 30 because of an issue that arises with a participating unit of local government

¹⁹ Available at: <https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-02cpdn.pdf>.

with regard to its participation in the urban county's CDBG program. While this will not affect a consortium's CDBG funding, such an action may result in a loss of its HOME funding for that fiscal year. Therefore, a September 30 deadline for the urban county qualification process may help align the programs and eliminate problems that arise regarding a consortium's timely completion of its qualification or requalification as a HOME consortium under the requirements in 24 CFR part 92.

Exclusion of Section 108-Generated Revenue from Program Income § 570.500

HUD proposes to remove language from § 570.500(a)(4)(ii) that excludes from the definition of "program income" revenues generated by certain activities financed by a Section 108 loan guarantee. HUD adopted § 570.500(a)(4)(ii) to promote the use of Section 108 financing for economic development activities. However, the regulations are confusing to recipients who want to use Section 108-generated revenue for other eligible activities because the recipients may infer that such revenue is not subject to any restrictions. That inference would be incorrect, however, because significant restrictions on the use of the program income do exist. Access to the revenue is restricted because it is by default pledged as security for repayment of the guaranteed loan for the term of the loan, which may be up to 20 years. Further, some recipients have noted that the requirement to use miscellaneous revenue for activities located in a HUD-approved Neighborhood Revitalization Strategy Area (NRSA) limits the provision's utility when implementing an NRSA would not be practicable for them. Given these problems and given that this exclusion has not provided any apparent benefits to Section 108 borrowers, HUD proposes to remove this provision. HUD believes that other proposed changes to the regulations will promote the increased use of CDBG and Section 108 funding for economic development more effectively and efficiently than maintaining the program income exclusion.

Treatment of Excess Program Income § 570.504

Currently, § 570.504(b)(2)(iii) requires each recipient to calculate the amount of program income cash balances on hand at the end of each program year (except those needed for

immediate cash needs, cash balances of a revolving loan fund, cash balances in lump sum drawdown accounts, and cash and investments held for Section 108 loan guarantee security needs). After all deductions, the recipient must determine if the cash balances as of the end of the program year exceed 1/12 of the most recent annual grant. The recipient must remit any excess amount to HUD as soon as practicable after the end of the program year. The regulations provide for the excess amount to be placed in the recipient's line of credit. HUD has determined that it cannot place the excess program income in a line of credit. Therefore, HUD proposes to require that the recipient send such excess program income to the United States Treasury. Note that the amount to be remitted to HUD does not include program income cash balances needed for various program purposes, e.g., amount pledged as security for a Section 108 loan.

Definition of Program Income – State CDBG Program § 570.489

In the definition of program income for the State CDBG program at § 570.489(e)(2)(iv)(C), an exclusion allows a unit of general local government funded by a State to retain up to \$100 per year in interest on deposit of grant funds before disbursement of the funds for activities for CDBG administrative expenses. The amount of \$100 previously aligned with § 85.21(h)(2)(i), which has been replaced by 2 CFR 200.305(b)(9), and which currently allows a unit of general local government funded by a State to retain up to \$500 per year. Therefore, HUD proposes to update § 570.489(e)(2)(iv)(C) by replacing the dollar amount with a reference to 2 CFR 200.305(b)(9).

Reporting Data on Use of CDBG Funds § 570.507

HUD proposes to add a requirement at § 570.507(d) to require a recipient to collect and report data on its use of CDBG funds in the Integrated Disbursement and Information System (IDIS). HUD has required recipients to report program activity and expenditure data in IDIS since 1996, but part 570 requires only that recipients must generally “submit such other reports and information as HUD determines are necessary.” The revision would make it clear to recipients that they must use IDIS to submit such reports as required by § 570.507.

Conflict of Interest Public Disclosure Requirements §§ 570.489, 570.611

Currently, §§ 570.489(h)(4)(i) (for State recipients) and 570.611(d)(1)(i) (for entitlement recipients) require that when recipients request that HUD consider an exception to the conflict-of-interest requirements, recipients must have documentation of disclosure of the nature of the conflict accompanied by an assurance that there has been a public disclosure of the conflict and a description of how the public disclosure was made. The regulations do not make clear what “public disclosure” means. Some recipients define public disclosure as public hearings or publication in a newspaper of general local circulation; others believe that posting it on the recipient’s website is sufficient. To clarify and make standard what public disclosure means, HUD proposes to add language to §§ 570.489(h)(4)(i) and 570.611(d)(1)(i) that would define public disclosure as disclosure through any of the following media: publication on the recipient’s website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers. HUD also clarifies the existing requirement to make it explicit that grantees must provide HUD evidence of the public disclosure.

Section 108 Loan Guarantees §§ 570.704, 570.705

Application Requirements

The Section 108 application submission requirements at § 570.704(b) state that an applicant should provide the application “to the appropriate HUD Office,” but do not distinguish whether the application should go to the applicant’s local HUD Field office or Headquarters. The proposed rule would explicitly state that applicants should submit applications for Section 108 loan guarantee assistance to HUD Headquarters, ensuring that HUD Headquarters can promptly review such applications concurrently with HUD Field office staff.

Prior to 2015, the regulations implied, but did not clearly state, that HUD Field offices reviewed applications first and then forwarded the application together with its recommendation for approval or disapproval to HUD Headquarters. HUD removed this provision in a 2015

rulemaking, leaving the rule silent as to which HUD office(s) applicants should submit an application. In concert with the 2015 rulemaking, CPD's Financial Management Division (FMD) at HUD Headquarters (which administers the Section 108 program) implemented a concurrent review process with CPD Field office staff. However, some applicants have continued to submit applications only to HUD Field offices. HUD Field office staff are responsible for many CPD programs and may not review a submitted application as promptly as FMD or notify FMD that they have received a new application. Applications submitted only to HUD Field offices may therefore result in a delay in the start of the concurrent review process.

The submission requirements also do not clearly reiterate the basic information an applicant needs to include in an application: specifically, the proposed eligible activity under § 570.703 and the source of the payment of fees under § 570.712 (in addition to the national objectives criteria at § 570.208, which is already identified in the current program regulation at § 570.704(b)(1)). Other parts of subpart M include these requirements, but the proposed rule would reiterate those requirements to clearly identify what information the Section 108 application must contain. HUD proposes to add these references to § 570.704(b)(1) and (2), respectively.

Finally, HUD proposes to better organize the submission requirements at § 570.704(b) pertaining to necessary certifications. The proposed revisions would reorganize the required certifications in a format better suited for applicants to understand. HUD believes such clarity will help applicants prepare an application correctly and ensure that requests for missing certifications do not delay HUD's review. Another revision would correct an error in the current regulation and would require Section 108 applicants to certify that they must impose assessments on properties owned and occupied by moderate-income persons, to recover the *non*-guaranteed loan funded portion of the capital cost without paying such assessments on their behalf from guaranteed loan funds, instead of the current language which discusses only the "guaranteed" loan funded portion of the capital cost.

Loan Requirements

The limitations on commitments at § 570.705(a)(1)(iii) permit HUD to place a higher priority on applications containing activities to be carried out in areas designated as empowerment zones/enterprise communities by the Federal Government or a State. Statutory authorization for such activities has lapsed, removing the need to place a higher priority on activities carried out in such areas. Therefore, HUD proposes to delete the language in § 570.705(a)(1)(iii) referring to empowerment zones/enterprise communities and replace it with language describing areas designated as economically distressed by the Federal Government or by any State.

Security Requirements

Security requirements outlined in § 570.705(b) list examples of acceptable forms of additional security (other than CDBG funds) for loan guarantees that the loan guarantee contract between HUD and a borrower will specify. However, the limited examples of security may mislead potential applicants into believing that the regulations limit the security pledged for loan guarantees to the listed types of security. Publishing such information through guidance documents and marketing materials and engaging in direct outreach to potential applicants are clearer and more effective ways to communicate the types of security that a borrower may pledge. Therefore, HUD proposes to remove and reserve the examples of security HUD may accept at § 570.705(b)(3)(i) through (iv).

Additionally, HUD proposes to delete subsections that are unnecessary or inconsistent with other provisions. Section 570.705(a)(2)(iii)(A) through (C) appear to provide three methods of calculating limitations on commitments to guarantee loans for recipients that receive grants under subpart F. However, paragraph (a)(2)(iii)(A) is duplicative of 570.705(a)(2)(iii), and paragraphs (a)(2)(iii)(B) and (C), which allow for using an average of the three most recent grants, are inconsistent with § 570.705(a)(2)(iii).

F. ICDBG Program

HUD also proposes certain corresponding changes to Part 1003, where appropriate, that are intended to align the ICDBG program with the CDBG program.

Definitions § 1003.4

HUD proposes amending the Definitions section to include “activity delivery costs.” Similar to CDBG recipients and subrecipients, ICDBG recipients and subrecipients may incur costs typically referred to as “activity delivery costs” related to carrying out specific ICDBG eligible activities. The ICDBG regulations do not specifically define this term; therefore, HUD proposes to add a definition at § 1003.4. This addition makes clear that recipients and subrecipients must use the cost principles at 2 CFR part 200, subpart E, in determining the allowability of the costs. In particular, recipients and subrecipients must ensure that activity delivery costs consisting of staff salaries are allocable to the specific activity and adequately documented.

Eligible Activities §§ 1003.201, 1003.202, 1003.203

Basic eligible activities

HUD proposes to add a new § 1003.201(r) to clarify that recipients can assist eligible activities if they are part of mixed-use properties that also contain ineligible uses, so long as the recipient expends ICDBG funds only on the eligible use. The proposed rule also would add a definition of “mixed-use property” to the new § 1003.201(r). This is a conforming change to the ICDBG regulations to align them with the proposed changes to the CDBG regulations in this proposed rule.

Additionally, the Tornado Shelters Act (Pub. L. 108-146; 117 Stat. 1883, enacted December 3, 2003) (42 U.S.C. 5301, note), authorized the construction or improvement of tornado shelters in certain neighborhoods and manufactured housing communities as an eligible activity under the CDBG program. Consistent with the change to § 570.201, HUD proposes to insert a provision at § 1003.201(p) that would codify the use of ICDBG funds for tornado safe

shelters as an eligible activity under certain conditions. As discussed above with respect to CDBG, this activity is already eligible under ICDBG. HUD is simply codifying in regulations a statutory change that has been codified in law for many years.

Finally, consistent with CDBG, HUD proposes to add a new paragraph (q) to clarify that essential repairs and operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosures is also an eligible activity.

Eligible rehabilitation and preservation activities

HUD proposes to amend § 1003.202(a) to clarify that reconstruction of housing is an eligible ICDBG activity. Reconstruction of buildings or structures, including housing, has been an eligible ICDBG activity since 1996. However, the program regulations do not clearly and expressly identify reconstruction as an eligible activity related to housing. To make clear that reconstruction is an eligible activity under § 1003.202(a), HUD proposes to add the words “and reconstruction” to the introductory language at § 1003.202(a). This update will be a conforming change for the ICDBG regulations to align them with the same proposed changes to the CDBG regulations in this proposed rule.

Special economic development activities

HUD proposes to amend § 1003.203(b) governing special economic development activities. Section 1003.203 governs the use of ICDBG funds for special economic development activities and includes an illustrative list of eligible forms of assistance to private for-profit businesses. The ICDBG regulations already list forms of support by which recipients can provide assistance to private, for-profit businesses where the assistance is appropriate to carry out an economic development project. HUD has previously interpreted this provision to allow ICDBG assistance to New Markets Tax Credit (NMTC) investment vehicles. The proposed revisions would explicitly indicate that ICDBG recipients are allowed to provide assistance to an economic development project through a for-profit entity that passes the funds through a financing mechanism (*e.g.*, Qualified Opportunity Funds and NMTC investment vehicles). This

update is a conforming change to the ICDBG regulations to align them with the same proposed changes to the CDBG regulations in this proposed rule.

Program administration costs § 1003.206

HUD proposes to amend § 1003.206 to add a reference to the new proposed definition of “activity delivery costs” in § 1003.4 to help ICDBG recipients distinguish between administrative costs and activity delivery costs. This update is a conforming change to the ICDBG regulations to align them with the proposed changes to the CDBG regulations in this proposed rule.

Criteria for compliance with the primary objective § 1003.208

HUD’s regulation at § 1003.208 provides the criteria for determining whether an ICDBG-assisted activity complies with one or more of the national objectives. HUD proposes conforming changes to paragraphs (b), (c), and (d) Limited Clientele activities, Low- and Moderate-Income Housing Activities, and Job creation or retention activities. This update is a conforming change to the ICDBG regulations to align them with the proposed changes to the CDBG regulations in this proposed rule.

With respect to Limited Clientele activities, HUD proposes revisions to paragraph (b) to clarify requirements and provide better guidance to recipients. Consistent with the reasons stated above in section III.E with respect to the CDBG program, HUD proposes to clarify in the ICDBG program that the presumed LMI group of “illiterate adults” means adults unable to read and write in English and in their first language, if the adult’s first language is not English. HUD also proposes to broaden the application of the presumed LMI group of “battered spouses” to cover all survivors of domestic violence. The current category of “battered spouses” limits the presumption to spouses. However, unmarried survivors of violence may be presumed to be LMI. Therefore, HUD proposes to remove “battered spouses” from the presumed categories of LMI persons and replace it with “survivors of domestic violence.” HUD interprets “battered spouses” to be a subcategory of “survivors of domestic violence” still presumed to be LMI under the

ICDBG regulations. As stated earlier, HUD also proposes to interpret survivors of human trafficking to be a subcategory of homeless persons, which is presumed to be LMI under these provisions, in order to ensure that they have access to the benefits and services necessary for their safety, protection, and basic wellbeing.

Finally, HUD proposes to add categories of groups of persons at § 1003.208(b)(1)(i) that, when served exclusively or in combination with groups of persons in other listed categories, may be presumed to benefit persons, 51 percent of whom are LMI, barring any evidence to the contrary: persons who meet the Federal poverty guidelines and persons who are insured by Medicaid. As stated in reference to the same changes being proposed in CDBG in §§ 570.208(a)(2) and 570.483(b)(2), the Federal poverty guidelines, established by the Department of Health and Human Services based on poverty thresholds published by the Census Bureau, estimate the minimum amount of income needed to cover basic needs. Medicaid coverage varies by State and other eligibility requirements, but income qualification is generally less than four times the Federal poverty guidelines. Further, while nearly all jurisdictions in the U.S. have more LMI persons than persons in poverty, in a small number of jurisdictions more persons are in poverty than are LMI. Allowing ICDBG grantees to presume that persons in poverty are LMI will address such anomalies and simplify requirements across other Federal programs that also provide benefits to persons who meet the Federal poverty guidelines.

With respect to the Low- and Moderate-Income Housing activities in paragraph (c), to demonstrate compliance with the LMI housing national objective, an ICDBG-assisted residential structure must be occupied by LMI households. Meeting the LMI housing national objective is based on households rather than individuals or families. A household is all the persons that occupy a housing unit, whether related or unrelated. Meeting the LMI housing national objectives criteria is also based on the number of housing units. Generally, ICDBG funds may only be used to assist housing units occupied by LMI households. Accordingly, in order for an activity to meet the LMI housing national objective, each single-unit structure that is assisted

with ICDBG funds must be occupied by an LMI household. When ICDBG funds are used to assist a two-unit structure, to meet the LMI housing national objective, at least one unit must be so occupied. Where there are three or more units in a structure, a minimum of 51 percent of the units must be occupied by LMI households. ICDBG-assisted activities that may meet this national objective include homeownership assistance, housing rehabilitation (single and multifamily), and acquisition of real property where a recipient or subrecipient will construct housing units using another funding source.

Some exceptions permit eligible activities to meet the LMI housing national objective where less than 51 percent of multifamily units are occupied by LMI households. Such activities include assistance for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project where not less than 20 percent of the units will be occupied by LMI households at affordable rents. In addition, the proportion of the total cost of developing the project to be paid with ICDBG funds must be no more than the proportion of units in the project that will be occupied by LMI households. The proposed rule would add as additional exceptions substantial rehabilitation and conversion of a nonresidential structure to a multifamily, non-elderly rental housing project. This change would align treatment of substantial rehabilitation with new construction, as is also proposed in the CDBG section 24 CFR 570.208(a)(3)(i) and 570.483(b)(3) of this rule for purposes of meeting the national objectives criteria for housing activities.

Finally, with respect to job creation or retention activities in paragraph (d), documenting whether a job is held by or made available to an LMI person can present a financial and administrative burden on ICDBG recipients due to the data that recipients must gather and collect from assisted businesses. This aligns with changes proposed in CDBG regulations at 24 CFR 570.208(a)(4) and 570.483(b)(4) above. As noted there, to help alleviate this burden, HUD is proposing to revise the regulations to add a presumption based on the location of an assisted business and based on where the person holding the job resides. The revised regulation would

provide that, for purposes of determining whether a job is held by or made available to a low or moderate income person, the person may be presumed to be a low or moderate income person if: he/she resides within a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median; or, if he/she resides in a census tract designated as economically distressed by the Federal Government; or, if the assisted business is located in and the job under consideration is to be located in such a tract or area. Revising the criteria for the presumption would significantly clarify the standards for recipients and encourage greater use of ICDBG funds for job creation and retention activities in many Tribal communities.

Reports § 1003.506

HUD is proposing to amend the due dates for annual status and evaluation reports (ASERs) in § 1003.506(a) to accommodate ICDBG grantees that have a Tribal program year different than the Federal Fiscal year. The term “Tribal program year” is defined in the Indian Housing Block Grant (IHBG) regulations at § 1000.10 as the fiscal year of the IHBG recipient. Under the proposed rule, ASERs would be due 90, rather than 45 days, after the end of the grantee’s Tribal program year, or after the end of the Federal fiscal year if the grantee has a Tribal program year that ends on the same date the Federal fiscal year ends. The amendment would align the ASER due dates with the due dates for Annual Performance Reports under the IHBG program to assist grantees of both programs to more easily track and schedule submission of reports due to HUD. ASERs would also continue to be required at grant close-out in accordance with the requirements of § 1003.508.

HUD also proposes to revise the language in § 1003.506(a) with respect to the form of ASER reports. The current regulation requires a narrative for the ASER which has resulted in significant variations in the reports submitted as well as difficulty in capturing relevant and useful data. HUD intends in the future, through the PRA process, to develop and promulgate a standardized ASER form with drop down boxes and set data points to assist recipients in meeting the reporting requirements in a consistent manner, which will both improve the usefulness of the

data received and facilitate data retention and analysis. The proposed revision to the current language will make it easier for HUD to implement such a form in the future.

Conflict of interest § 1003.606

To clarify and standardize the meaning of the term “public disclosure,” HUD proposes to add language to § 1003.606 that would define public disclosure as disclosure through any of the following media: publication on the recipient’s website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers. Currently, § 1003.606 requires that when recipients request that HUD consider an exception to the conflict-of-interest requirements, recipients must have documentation of disclosure of the nature of the conflict accompanied by an assurance that there has been a public disclosure of the conflict and a description of how the public disclosure was made. The regulations do not make clear what “public disclosure” means. Some recipients define public disclosure as public hearings or publication in a newspaper of general local circulation; others believe that posting it on the recipient’s website is sufficient. This update will clarify the meaning of the term and is a conforming change for the ICDBG regulations to align them with the proposed changes to the CDBG regulations in this proposed rule. HUD also clarifies the existing requirement to make it explicit that grantees must provide HUD evidence of the public disclosure.

G. Technical Corrections and Outdated Provisions

HUD proposes the following technical corrections:

Sections 91.225(b)(2) (for entitlement recipients) and 91.325(b)(3) (for State recipients) refer to § 570.2 in certifying the consolidated housing and community development plan; however, § 570.2 was removed from the regulations in 1996. The provisions should instead refer to implementing the primary objective of the Act at § 570.200(a)(3). Therefore, HUD proposes to replace the citation to § 570.2 with a citation to § 570.200(a)(3).

HUD proposes to correct a typographical error in § 570.201(k), which refers to section 105(a)(21) of the Act concerning assistance to institutions of higher education but should instead refer to housing services activities under section 105(a)(20) of the Act.

HUD proposes to redesignate § 570.205(a)(6) as § 570.205(b), as HUD originally intended policy, planning, management, and capacity building activities to be a subheader for the activities below and separate from paragraph (a).

HUD proposes to correct a reference in § 570.207 to a non-existent section of § 570.3. The definitions in section 570.3 are undesignated; however, § 570.207(a)(1) contains a reference to § 570.3(d), which does not exist.

HUD proposes to correct § 570.208(d)(5), which refers to § 91.215(e) in discussing area revitalization strategy areas, but should refer to § 91.215(g), which discusses neighborhood revitalization.

HUD proposes to correct references in § 570.307 to non-existent sections of § 570.3. The definitions in section 570.3 are undesignated; however, § 570.307(b)(1) and (d)(1) both contain references to § 570.3(3), which does not exist.

HUD proposes to correct §§ 570.482(c)(1) and 570.482(c)(2)(i), which cite to section 105(a)(23) of the Act, which concerns treatment of property acquired in tax foreclosure proceedings; but should instead cite to section 105(a)(22) of the Act, which discusses microenterprise assistance activities.

HUD proposes to restore § 570.489(e)(3)(ii)(C), which was mistakenly omitted from the Code of Federal Regulations in 2015.

HUD proposes to correct the citation in § 570.490(a)(2) to § 91.320(j)(1), which should instead be to CDBG requirements in the action plan at § 91.320(k)(1).

HUD proposes to correct § 570.504(c) regarding the disposition of program income by subrecipients, which states that subrecipients holding program income after the expiration of a

subrecipient agreement shall pay such funds to the recipient as required by § 570.503(b)(8).

However, the correct citation is to § 570.503(b)(7).

The proposed rule would delete subparts E and G of part 570. Subpart E governs a variety of special purpose grants that no longer exist. Subpart G governs Urban Development Action Grants, which likewise no longer exist. In concert, HUD proposes revisions to remove references to subparts E and G in the definition of “CDBG funds” at § 570.3; the conflict-of-interest requirements at § 570.611(a)(2); and subpart K applicability at § 570.600(a).

The proposed rule would also remove § 570.613, “Eligibility restrictions for certain resident aliens.” This section provides restrictions for “certain newly legalized aliens” as they were described in 24 CFR part 49, which no longer exists. The rule was intended to address the 1986 amendments to the Immigration and Naturalization Act of 1952, which prohibited certain noncitizens from receiving Federal financial assistance furnished on the basis of financial need for a period of five years. (Section 245A(h) of the Immigration and Nationality Act, 8 U.S.C. 1255a(h)). As this provision applied to newly legalized aliens that entered the country before January 1, 1982, and admitted for lawful residence in accordance with the 1986 amendments, HUD has removed 24 CFR part 49, which described this population, and is now removing the regulation that referenced this statutory requirement.

HUD proposes to revise Uniform Relocation Act (URA) citations in the CDBG and ICDBG program regulations (§§ 570.606 and 1003.602) to update an outdated URA regulatory citation (49 CFR 24.2(g)(2)). The URA regulatory citation changed to 49 CFR 24.2(a)(9)(ii) in the 2005 URA final rule but was never updated in the CDBG and ICDBG program regulations.

H. Interaction of this Proposed Rule with HUD’s Proposed Rule on Affirmatively Furthering Fair Housing.

HUD acknowledges that this proposed rule proposes to amend sections of the Code of Federal Regulations that HUD has also previously proposed to amend in its Affirmatively Furthering Fair Housing (AFFH NPRM), published February 9, 2023 (88 FR 8516). Both rules

propose amendments to §§ 91.105(b)(2) and (c) and 91.115(b)(2). The AFFH NPRM and this NPRM propose to amend these provisions in different ways that do not conflict with each other.

HUD will consider public comments received on each proposed rule. The public comment period on the AFFH NPRM closed on April 24, 2023, and HUD is considering the public comments received on the AFFH NPRM's proposed changes to the referenced provisions as part of that rulemaking. HUD invites the public to comment on the revisions and additions proposed as part of this rulemaking.

Although the proposed regulatory amendments in this NPRM do not reflect the amendments proposed in the AFFH NPRM, HUD intends this rule to ultimately be consistent with a final AFFH rule. HUD will consider all relevant comments received on the AFFH NPRM, as well as on this NPRM. HUD will reconcile the regulatory language in its final rules, ensuring that the final version of this rule, if published after a final AFFH rule is codified, is consistent with all changes made in that published final AFFH rule.

For example, both NPRMs propose to add new language to 24 CFR 91.115(b)(2). The AFFH NPRM proposes to apply certain requirements of this provision to the Equity Plans that could be established by an AFFH final rule. The proposed language in this NPRM does not account for such Equity Plan requirements since that is not the subject of this rulemaking. However, if HUD adds Equity Plan requirements to 24 CFR 91.115(b)(2) in its AFFH final rule, a subsequent final rule published as part of this rulemaking will include that change, and appropriately reconcile the additions made in each rule.

IV. Findings and Certifications

Regulatory Review (Executive Orders 12866, 13563, and 14094)

Pursuant to Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant, and therefore, subject to review by OMB in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are

“outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. Executive Order 14094 entitled “Modernizing Regulatory Review” (hereinafter referred to as the “Modernizing E.O.”) amends section 3(f) of Executive Order 12866 (Regulatory Planning and Review), among other things.

HUD believes that this proposed rule, by revising the Community Development Block Grant (CDBG) and related Section 108 loan guarantee program regulations to make it easier for recipients to promote economic development and recovery in low- and moderate-income communities and support investments in underserved areas, together with corresponding changes in the ICDBG program, will increase the effectiveness of these grant programs. The proposed rule has been determined to be a “significant regulatory action,” as defined in section 3(f) of Executive Order 12866, but not economically significant under section 3(f)(1) of the Order. The docket file is available for public inspection online at www.regulations.gov.

Paperwork Reduction Act

The information collection requirements contained in this rule are currently approved by OMB and have been given OMB Control Numbers 2506-0077, 2506-0085, and 2577-0191. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact

on a substantial number of small entities. This analysis also considers the potential impact on Indian Tribes.

As discussed in the preamble, the proposed rule would update CDBG's and ICDBG's economic development regulations to make it easier for recipients to promote economic development and recovery in low- and moderate-income communities and support investments in underserved areas. Because the CDBG economic development regulations and standards have not been updated since 1995, the proposed rule would provide a much-needed update to ease the expenditure of funds for economic development activities. The proposed rule would lessen the economic impact on grantees, small entities and recipients by reducing eligibility and recordkeeping burdens. This would likely result in increased economic development activities and the associated creation of economic opportunities principally for low- and moderate-income persons.

The proposed rule would primarily impact CDBG, Section 108 borrowers, and ICDBG grantees. CDBG grantees and section 108 borrowers are State and local governments, some of which are small government entities, and ICDBG grantees are Indian Tribes and Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act. These grantees administer the CDBG, section 108, and ICDBG programs, are familiar with the regulatory requirements, and are ultimately responsible for program compliance. While some impacts may filter down to smaller governmental and non-governmental entities, the expected impact would be a decrease in economic burden, as discussed above. As such, the proposed rule would likely have a positive impact on small businesses and entities. The purpose of the proposed rule would be to make more funding available for all types of economic development projects. For small entities, including small governments, the lessening of regulatory burden would likely benefit those that receive CDBG, ICDBG, and section 108 funds.

Accordingly, it is HUD's determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this proposed rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this proposed rule that will meet HUD's objectives as described in this preamble.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410-0500. The FONSI is also available through the Federal eRulemaking Portal at <http://www.regulations.gov>.

Federalism (Executive Order 13132)

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either: imposes substantial direct compliance costs on State and local governments and the Act does not require those costs; or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments nor preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments, and on the private sector. This proposed rule does not

impose any Federal mandates on any State, local, or Tribal governments, or on the private sector, within the meaning of UMRA.

Consultation With Indian Tribes (Executive Order 13175)

HUD strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. HUD has evaluated this proposed rule under the Department's consultation policy and under the criteria in Executive Order 13175 and has determined that Tribal consultation is necessary regarding the proposed changes. A Dear Tribal Leader was sent out to Indian Tribes on November 15, 2021, seeking comments on the proposed changes to the ICDBG regulations in this proposed rule. HUD received comments from two Tribes and one grant writer with experience providing grant writing services to Tribes under the ICDBG program. The three Tribal commenters were generally supportive of the proposed rule. Two of the three commenters did suggest additional areas for expansion of the proposed rule and/or areas that may be appropriate for separate rulemaking. Among the suggestions were clarification of the term "economically distressed" as it relates to census tracts and overall improvements to the ICDBG application process. One Tribal commenter expressed general agreement with the proposed changes but went on to comment that the entire ICDBG regulation is overdue for an overhaul. Among this commenter's specific concerns were rules governing the use of ICDBG funds for new housing construction and rehabilitation, as well as HUD's weighting of criteria in Notices of Funding Opportunity. In developing this proposed rule, HUD considered all Tribal feedback provided and HUD will conduct additional consultation before issuing a final rule.

List of Subjects

24 CFR Part 91

Aged, Grant programs-housing and community development, Homeless, Individuals with disabilities, Low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 570

Administrative practice and procedure; American Samoa; Community development block grants; Grant programs-education; Grant programs-housing and community development; Guam; Indians; Loan programs-housing and community development; Low- and moderate-income housing; Northern Mariana Islands; Pacific Islands Trust Territory; Puerto Rico; Reporting and recordkeeping requirements; Student aid; Virgin Islands.

24 CFR Part 1003

Alaska; Community development block grants; Grant programs-housing and community development; Grant programs-Indians; Indians; Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 91, 570, and 1003 as follows:

PART 91 – CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

1. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. Amend § 91.105 by revising paragraphs (b)(2) and (c)(1) to read as follows:

§ 91.105 Citizen participation plan; local governments.

* * * * *

(b) * * *

(2) The citizen participation plan must require the jurisdiction to publish the proposed consolidated plan in a manner that affords its residents, public agencies, and other interested parties a reasonable opportunity to examine its content and to submit comments. The citizen participation plan must set forth how the jurisdiction will publish the proposed consolidated plan and give reasonable opportunity to examine the document’s content. The requirement for publishing may be met by publication of a summary of the document in one or more newspapers

of general circulation or on the jurisdiction’s official government Web site. The summary must describe the content and purpose of the consolidated plan and must include a list of the locations where copies of the entire proposed document may be examined. Such listings of locations shall include libraries and government offices. A jurisdiction is encouraged to use all available social media and electronic communication at its disposal to make citizens and residents aware of the availability of the proposed consolidated plan for comment and to include such methods in its citizen participation plan, as appropriate. This includes but is not limited to: e-mails; text messaging (SMS); media advertisements; public service announcements made through broadcast media or through a pre-recorded message delivered by using an automatic telephone dialing system; and electronic notifications to public and private agencies identified in accordance with § 91.100. A jurisdiction may also make citizens and residents aware of the availability of the proposed consolidated plan for comment through postings in public places, such as grocery store bulletin boards and neighborhood centers. Publications must be accessible to persons with disabilities. Publications must also provide meaningful access to limited English proficient persons as more fully described in paragraph (a)(4) of this section. In addition, the jurisdiction must provide a reasonable number of free hardcopies of the plan to residents and groups that request it.

* * * * *

(c) * * *

(1) The citizen participation plan must specify the criteria the jurisdiction will use for determining what changes in the jurisdiction’s planned or actual activities constitute a substantial amendment to the consolidated plan. (See § 91.505.) The citizen participation plan must include, among the criteria for a substantial amendment, changes in the use of CDBG funds from one eligible activity to another and adding an activity not previously identified in the Consolidated Plan or Action Plan.

* * * * *

3. Amend § 91.115 by revising paragraph (b)(2) to read as follows:

§ 91.115 Citizen participation plan; States.

* * * * *

(b) * * *

(2) The citizen participation plan must require the State to publish the proposed consolidated plan in a manner that affords residents, units of general local governments, public agencies, and other interested parties a reasonable opportunity to examine the document's content and to submit comments. The citizen participation plan must set forth how the State will make publicly available the proposed consolidated plan and give reasonable opportunity to examine the document's content. To ensure that the consolidated plan and the PHA plan are informed by meaningful community participation, program participants should employ communications means designed to reach the broadest audience. The requirement for publishing may be met by publication of a summary of the document in one or more newspapers of general circulation or on the State's official government website. The summary must describe the content and purpose of the consolidated plan and must include a list of the locations where copies of the entire proposed document may be examined. Such listings of locations shall include libraries and government offices. A State is encouraged to use all available social media and electronic communication at its disposal to make citizens and residents aware of the availability of the proposed consolidated plan for comment and to include such methods in its citizen participation plan, as appropriate. This includes but is not limited to, e-mails, text messaging (SMS); media advertisements, public service announcements made through broadcast media or through a pre-recorded message delivered by using an automatic telephone dialing system, and electronic notifications to public and private agencies identified in accordance with § 91.100. A State may also make citizens and residents aware of the availability of the proposed consolidated plan for comment through postings in public places such as grocery store bulletin boards and neighborhood centers. Publications must be accessible to persons with disabilities. Publications

must also provide meaningful access to limited English proficient persons as more fully described in paragraph (a)(4) of this section. In addition, the State must provide a reasonable number of free copies of the plan to its residents and groups that request a copy of the plan.

* * * * *

4. Amend § 91.205 by revising paragraph (a) to read as follows:

§ 91.205 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must provide a concise summary of the jurisdiction's estimated housing needs (including manufactured housing) projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on U.S. Census data, as provided by HUD, as updated by any properly conducted local study, or any other reliable source that the jurisdiction clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.100 and the citizen participation process conducted in accordance with § 91.105. For a jurisdiction seeking funding on behalf of an eligible metropolitan statistical area under the HOPWA program, the needs described for housing and supportive services must address the unmet needs of low-income persons with HIV/AIDS and their families throughout the eligible metropolitan statistical area.

* * * * *

5. Amend § 91.210 by revising paragraph (a)(1) to read as follows:

§ 91.210 Housing market analysis.

(a) * * *

(1) Based on information available to the jurisdiction, the plan must describe the significant characteristics of the jurisdiction's housing market, including the supply, demand, and condition and cost of housing and the housing stock (including manufactured housing) available to serve persons with disabilities, and to serve other low-income persons with special needs, including persons with HIV/AIDS and their families.

* * * * *

6. Amend § 91.215 by revising paragraphs (a)(1) and (g) to read as follows:

§ 91.215 Strategic plan.

(a) * * *

(1) Indicate the general priorities for allocating investment geographically within the jurisdiction and among different eligible activities and needs. Also provide quantitative, neighborhood-level outcome goal accomplishments in the performance report as required at § 91.520.

* * * * *

(g) *Neighborhood revitalization.* Jurisdictions are encouraged to identify locally designated areas where geographically targeted revitalization efforts are carried out through multiple activities in a concentrated and coordinated manner. Such areas may include those designated as economically distressed by the Federal Government or by the State that exhibit significantly high levels of poverty or low median income. In addition, a jurisdiction may elect to carry out a HUD-approved neighborhood revitalization strategy that includes the economic empowerment of low-income residents with respect to one or more of its areas. If HUD approves such a strategy, the jurisdiction can obtain greater flexibility in the use of the CDBG funds in the revitalization area(s) as described in 24 CFR part 570, subpart C. This strategy must identify long-term and short-term objectives (e.g., physical improvements, social initiatives and economic empowerment), expressing them in terms of measures of outputs and outcomes the jurisdiction expects to achieve in the neighborhood through the use of HUD programs.

* * * * *

§ 91.225 [Amended]

7. Amend § 91.225 in paragraph (b)(2) by removing “24 CFR 570.2” and adding in its place “24 CFR 570.200(a)(3)”.

8. Amend § 91.305 by revising paragraph (a) to read as follows:

§ 91.305 Housing and homeless needs assessment.

(a) *General.* The consolidated plan must provide a concise summary of the State's estimated housing needs (including manufactured housing) projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on U.S. Census data, as provided by HUD, as updated by any properly conducted local study, or any other reliable source that the State clearly identifies and should reflect the consultation with social service agencies and other entities conducted in accordance with § 91.110 and the citizen participation process conducted in accordance with § 91.115. For a State seeking funding under the HOPWA program, the needs described for housing and supportive services must address the unmet needs of low-income persons with HIV/AIDS and their families in areas outside of eligible metropolitan statistical areas.

* * * * *

9. Amend § 91.310 by revising paragraph (a)(1) to read as follows:

§ 91.310 Housing market analysis.

(a) * * *

(1) Based on data available to the State, the plan must describe the significant characteristics of the State's housing markets (including such aspects as the supply, demand, condition, cost, and type of housing, including manufactured housing).

* * * * *

§ 91.325 [Amended]

10. Amend § 91.325 in paragraph (b)(3) by removing “24 CFR 570.2” and adding in its place “24 CFR 570.200(a)(3)”.

11. Amend § 91.500 by revising the section heading and adding a sentence at the end of paragraph (a) to read as follows:

§ 91.500 HUD Review of consolidated plan.

(a) * * * The fact that HUD has not disapproved the plan does not constitute approval of the activities identified therein as meeting the applicable statutory and regulatory requirements.

* * * * *

12. Amend § 91.520 by adding a sentence at the end of paragraph (d) to read as follows:

§ 91.520 Performance reports.

* * * * *

(d) * * * Except for States, the report shall also identify quantitative, neighborhood-level outcome goal accomplishments related to one or more non-jurisdiction-wide activities.

* * * * *

PART 570 – COMMUNITY DEVELOPMENT BLOCK GRANTS

13. The authority citation for part 570 continues to read as follows:

Authority: 12 U.S.C. 1701x, 1701 x-1; 42 U.S.C. 3535(d) and 5301-5320.

14. Amend § 570.3 as follows:

- a. Add in alphabetical order a definition for “Activity delivery costs”;
- b. Revise the definition of “CDBG funds”;
- c. Add in alphabetical order a definition for “Elderly”;
- d. Revise the definition for “Entitlement amount”; and
- e. Add in alphabetical order definitions for “Mixed-use property” and “Period of performance”.

The additions and revisions read as follows:

§ 570.3 Definitions.

* * * * *

Activity delivery costs means the allowable costs of work performed by a recipient or subrecipient in carrying out specific activities eligible under §§ 570.201 through 570.204 and 570.703. The cost principles at 2 CFR part 200, subpart E, must be used in determining the allowability of the costs.

* * * * *

CDBG funds means Community Development Block Grant funds, including funds received in the form of grants under subpart D or F of this part, funds awarded under section 108(q) of the Housing and Community Development Act of 1974, guaranteed loan funds under subpart M of this part, urban renewal surplus grant funds, and program income as defined in § 570.500(a).

* * * * *

Elderly means, for activities pursuant to § 570.202, a person 62 years of age or older. For all other activities, CDBG recipients and subrecipients are permitted to define “elderly” consistent with State law.

Entitlement amount means the amount of funds which a metropolitan city, urban county, or principal city as designated by OMB is entitled to receive under the Entitlement grant program, as determined by formula set forth in section 106 of the Act.

* * * * *

Mixed-use property means a property containing multiple uses, at least one of which must be eligible to be assisted with CDBG funds.

* * * * *

Period of performance means the time period beginning on HUD’s approval of a grant agreement for a given grant and ending six years from that date. For loan guarantees issued pursuant to subpart M of this part, the period of performance means the time period beginning on the date of HUD’s guarantee of a promissory note or other obligation and ending six years from that date.

* * * * *

15. Amend § 570.200 by revising paragraphs (a)(2) and (3), (b)(1), and (h)(1)(iii) to read as follows:

§ 570.200 General policies.

(a) * * *

(2) *Compliance with national objectives.* Grant recipients under the Entitlement and HUD-administered Small Cities programs and recipients of insular area funds under section 106 of the Act must certify that their projected use of funds has been developed so as to give maximum feasible priority to activities which will carry out one of the national objectives of benefit to low- and moderate-income families or aid in the prevention or elimination of slums or blight. The projected use of funds may also include activities that the recipient certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Consistent with the foregoing, each recipient under the Entitlement or HUD-administered Small Cities programs, and each recipient of insular area funds under section 106 of the Act must ensure and maintain evidence that each of its activities assisted with CDBG funds meets one of the three national objectives contained in its certification. A recipient must demonstrate that each activity meets a national objective within six years of the date of the initial drawdown of CDBG funds for that activity or the length of the period of performance and any extension permitted under § 570.509, whichever is shorter. Criteria for determining whether an activity addresses one or more of these objectives are found in § 570.208.

(3) *Compliance with the primary objective.* The primary objective of the Act is described in section 101(c) of the Act. Consistent with this objective, entitlement recipients, non-entitlement CDBG grantees in Hawaii, and recipients of insular area funds under section 106 of the Act must ensure that, over a period of time specified in their certification not to exceed three

years, not less than 70 percent of the aggregate of CDBG fund expenditures shall be for activities meeting the criteria under § 570.208(a) or (d)(5) or (6) for benefiting low- and moderate-income persons. Grantees are not permitted to expend more CDBG funds for activities that benefit low- and moderate-income persons during the following certification period to meet this requirement. For grants under section 107 of the Act, insular area recipients must meet this requirement for each separate grant. See § 570.420(d)(3) for additional discussion of the primary objective requirement for insular areas funded under section 106 of the Act. The requirements for the HUD-administered Small Cities program in New York are at § 570.420(d)(2). In determining the percentage of funds expended for such activities:

* * * * *

(b) * * *

(1) *Mixed-use properties containing both eligible and ineligible uses.* CDBG funds may be used to assist eligible activities even if the assisted activity is part of a multiple-use property containing one or more ineligible uses, if:

(i) The assisted activity is eligible and will occupy a designated and discrete area within the larger property; and

(ii) The recipient can determine the costs attributable to the eligible activity as separate and distinct from the overall costs of the multiple-use property.

(iii) Allowable costs are limited to those allocable to the eligible activity.

* * * * *

(h) * * *

(1) * * *

(iii) The costs and activities funded are in compliance with the requirements of this part and with applicable Environmental Review Procedures in 24 CFR part 58.

* * * * *

16. Amend § 570.201 as follows:

- a. Revise paragraph (a) and paragraph (e) introductory text;
- b. Redesignate paragraphs (e)(1) and (2) as (e)(2)(i) and (ii), paragraphs (e)(2)(i) and (ii) as (e)(2)(ii)(A) and (B); and paragraphs (e)(2)(ii)(A) through (D) as (e)(2)(ii)(B)(1) through (4);
- c. Add new paragraph (e)(1) and new paragraph (e)(2) introductory text;
- d. Remove the “(a)(21)” and add in its place “(a)(20)” in paragraph (k);
- e. Remove and reserve paragraph (m);
- f. Revise paragraph (p); and
- g. Add paragraphs (r) and (s);

The revisions and additions to read as follows:

§ 570.201 Basic eligible activities.

* * * * *

(a) *Acquisition.* Acquisition in whole or in part by the recipient, or other public or private nonprofit entity, by purchase, long-term lease (defined as a lease with a term of 15 years or more), donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.207.

* * * * *

(e) *Public services.* Provision of public services (including labor, supplies, and materials) including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 570.207(b)(4)), homebuyer downpayment assistance, or recreational needs. If housing counseling, as defined in 24 CFR 5.100, is provided, it must be carried out in accordance with 24 CFR 5.111.

(1) To be eligible for CDBG assistance, a public service must either be a new service or provide a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the unit of general local government (through funds raised by the

unit or received by the unit from the State in which it is located) in the 12 calendar months before the submission of the action plan. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the unit of general local government.)

(2) The amount of CDBG funds used for public services shall not exceed the amounts outlined in paragraph (e)(2)(i) or (ii) of this section, as applicable:

* * * * *

(p) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out specific eligible neighborhood revitalization or economic development activities. (The recipient must determine, prior to the provision of the assistance, that the activity for which it is attempting to build capacity would be eligible for assistance under this subpart C, and that the national objective claimed by the grantee for this assistance can reasonably be expected to be met within six years of the date of the initial drawdown of CDBG funds for the purpose of the entity receiving the technical assistance and undertaking the activity.) General administrative and operating costs of a public or nonprofit entity are not eligible under this paragraph. Capacity building for private or public entities (including grantees) for other purposes may be eligible under § 570.205.

* * * * *

(r) *Tornado-safe shelters.* CDBG funds may be used by the recipient or provided as loans or grants to non-profit and for-profit entities, including owners of manufactured housing communities, for the construction or improvement of tornado-safe shelters for manufactured housing residents in accordance with section 105(a) of the Act. Activities pursuant to this paragraph may be located only in a neighborhood (including a manufactured housing community) that-

(1) Contains at least 20 manufactured housing units within such proximity to the shelter that the shelter is available to the resident in the event of a tornado,

(2) Consists predominantly of persons of low and moderate income

(3) Is located within a State in which a tornado has occurred during the fiscal year for which with amounts to be used were made available or the preceding 3 fiscal years, as determined by the Secretary in consultation with the Administrator of the Federal Emergency Management Agency.

(s) *Use of grants for loan repayment, issuance, underwriting, servicing, and other costs.*

CDBG funds may be used for payment of costs pursuant to § 570.705(c), including the payment of fees in accordance with § 570.712, for loan guarantees issued pursuant to subpart M of this part.

17. Amend § 570.202 by revising paragraph (a) introductory text to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

(a) *Types of buildings and improvements eligible for rehabilitation and reconstruction assistance.* CDBG funds may be used to finance the rehabilitation and reconstruction of:

* * * * *

18. Amend § 570.203 by revising paragraphs (b) and (c) to read as follows:

§ 570.203 Special economic development activities.

* * * * *

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, loan participations, technical assistance, and other forms of support (including use of pass-through financing structures), for any activity where the assistance is appropriate to carry out an economic development project, excluding those described as ineligible in § 570.207(a). In selecting businesses to assist under this authority, the recipient shall minimize, to the extent practicable, displacement of existing housing, community amenities, businesses, and jobs in neighborhoods.

(c) Economic development services in connection with activities eligible under this section, including, but not limited to, outreach efforts to market available forms of assistance;

screening of applicants; reviewing and underwriting applications for assistance; preparation of all necessary agreements; management of assisted activities; the screening, referral, and placement of applicants for employment opportunities generated by CDBG-eligible economic development activities and the costs of providing necessary training for persons filling those specific positions. Training connected with job placement in specific businesses is considered an economic development activity and not a public service under §570.201(e). If individuals are not receiving training for specific positions at a specific business, general employment readiness programs or trainings for individuals in career fields are only eligible as public service activities under § 570.201(e) or, in limited cases, as part of a community economic development project under § 570.204.

§ 570.205 [Amended]

19. Amend § 570.205 by redesignating paragraph (a)(6) as paragraph (b) introductory text.

20. Amend § 570.206 by revising the introductory text and paragraph (g) introductory text and removing paragraphs (h) and (i).

The revisions read as follows:

§ 570.206 Program administrative costs.

Payment of reasonable program administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part. This does not include activity delivery costs as defined at § 570.3.

* * * * *

(g) *HOME Program.* Whether or not such activities are otherwise assisted by funds provided under this part, reasonable costs equivalent to those described in paragraphs (a), (b), (e), and (f) of this section for overall program management of the HOME program under title II

of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12701, et. seq.) if those costs are allowable costs under 24 CFR part 92.

* * * * *

17. Amend § 570.207 as follows:

a. Remove in paragraph (a)(1) “§ 570.3(d)” and add in its place “§ 570.3”;

b. Add paragraph (a)(4); and

c. Remove in paragraph (b)(3)(ii) “§ 570.201 (m) or (n)” and add in its place “§ 570.201(n)”.

The addition reads as follows:

§ 570.207 Ineligible activities.

* * * * *

(a) * * *

(4) *Operating expenses.* General administrative costs and operating expenses of public or nonprofit entities are ineligible except where such costs represent general administrative costs pursuant to § 570.206 or activity delivery costs of carrying out specific eligible activities under §§ 570.201 through 570.204.

* * * * *

18. Revise and republish § 570.208 to read as follows:

§ 570.208 Criteria for national objectives.

The following criteria shall be used to determine whether a CDBG-assisted activity complies with one or more of the national objectives as required under § 570.200(a)(2):

(a) *Activities benefiting low- and moderate-income persons.* Activities meeting the criteria in this paragraph (a) will be considered to benefit low-and moderate-income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately

ensure that activities that meet these criteria do not benefit moderate-income persons to the exclusion of low-income persons.)

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a primarily residential area, where at least 51 percent of the residents are low-and moderate-income persons. The activity must serve the entire area, but the area served need not be coterminous with census tracts or other officially recognized boundaries.

(ii) For metropolitan cities and urban counties, an activity, the benefits of which are available to all the residents in a primarily residential area, where less than 51 percent of the residents are low- and moderate-income persons, but where the proportion of such low- and moderate-income persons residing in the area is within the highest quartile of all areas in the recipient's jurisdiction in terms of the degree of concentration of residents who are low- and moderate-income persons. In applying this exception, HUD will determine the lowest proportion a recipient may use to qualify an area for this purpose, as follows:

(A) All census block groups in the recipient's jurisdiction shall be rank ordered from the block group of highest proportion of low and moderate income persons to the block group with the lowest. For urban counties, the rank ordering shall cover the entire area constituting the urban county and shall not be done separately for each participating unit of general local government.

(B) In any case where the total number of a recipient's block groups does not divide evenly by four, the block group which would be fractionally divided between the highest and second quartiles shall be considered to be part of the highest quartile.

(C) The proportion of low- and moderate-income persons in the last census block group in the highest quartile shall be identified. Any service area located within the recipient's jurisdiction and having a proportion of low- and moderate-income persons at or above this level shall be considered to be within the highest quartile.

(D) If block group data are not available for the entire jurisdiction, other data acceptable to the Secretary may be used in the above calculations.

(iii) An activity to develop, establish, and operate for up to two years after the establishment of, a uniform emergency telephone number system serving an area having less than the percentage of low- and moderate-income residents required under paragraph (a)(1)(i) or (as applicable) paragraph (a)(1)(ii) of this section, provided the recipient obtains prior HUD approval. To obtain such approval, the recipient must:

(A) Demonstrate that the system will contribute significantly to the safety of the residents of the area. The request for approval must include a list of the emergency services that will participate in the emergency telephone number system;

(B) Submit information that serves as a basis for HUD to determine whether at least 51 percent of the use of the system will be by residents who are low- and moderate-income persons. As available, the recipient must provide information that identifies the total number of calls actually received over the preceding 12-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, HUD will assume that the distribution of income among the callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. If HUD can conclude that the users have primarily consisted of low- and moderate-income persons, no further submission is needed by the recipient. If a recipient plans to make other submissions for this purpose, it may request that HUD review its planned methodology before expending the effort to acquire the information it expects to use to make its case;

(C) Demonstrate that other Federal funds received by the recipient are insufficient or unavailable for a uniform emergency telephone number system. For this purpose, the recipient must submit a statement explaining whether the lack of funds is due to the insufficiency of the

amount of the available funds, restrictions on the use of such funds, or the prior commitment of funds by the recipient for other purposes; and

(D) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons residing in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block groups), the total number of persons and the total number of low- and moderate-income persons residing within each census division, the percentage of low- and moderate-income persons residing within the service area, and the total cost of the system.

(iv) An activity for which the assistance to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments (as defined in § 570.200(c)) levied against residential properties owned and occupied by persons of low- and moderate-income.

(v) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(vi) In determining whether there is a sufficiently large percentage of low- and moderate-income persons residing in the area served by an activity to qualify under paragraph (a)(1)(i), (ii), or (vii) of this section, the most recently available Census Bureau data provided by HUD must be used to the fullest extent feasible, together with the section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Recipients that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low- and moderate-income. HUD will accept information

obtained through such surveys, to be used in lieu of the census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the recipient rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(vii) Activities meeting the requirements of paragraph (d)(5)(i) of this section may be considered to qualify under this paragraph, provided that the area covered by the strategy is either a Federally-designated Empowerment Zone or Enterprise Community or primarily residential and contains a percentage of low- and moderate-income residents that is no less than the percentage computed by HUD pursuant to paragraph (a)(1)(ii) of this section or 70 percent, whichever is less, but in no event less than 51 percent. Activities meeting the requirements of paragraph (d)(6)(i) of this section may also be considered to qualify under this paragraph (a)(1).

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons. The activity must meet one of the following tests:

(A) Benefit at least one of the following clientele, which are presumed to be low- and moderate-income persons: abused children; survivors of domestic violence; elderly persons (see 570.3 for definition of elderly); adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled;" homeless persons; illiterate adults (adults unable to read and write in English and in their first language, if their first language is not English); persons living with AIDS; migrant farm workers; persons who meet the Federal poverty guidelines; persons insured by Medicaid; or

(B) Require information on family size and income that demonstrates that at least 51 percent of the clientele are persons whose family income does not exceed the low- and moderate-income limit; or

(C) Have income eligibility requirements which limit the activity exclusively to low- and moderate-income persons; or

(D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low- and moderate-income persons.

(ii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (a)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (a)(1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (a)(3) of this section.

(iii) A microenterprise assistance activity carried out in accordance with the provisions of § 570.201(o) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during each program year who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(iv) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income

persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(A) In such cases where such training or provision of supportive services assists business(es), the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(v) The following kinds of activities may not qualify under this paragraph (a)(2): activities that provide benefits to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (a)(2)(iv) of this section.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which will be occupied by low- and moderate-income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the recipient, a subrecipient, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. Where housing activities being assisted meet the requirements of paragraph (d)(5)(ii) or (d)(6)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low- and moderate-income households must be at affordable rents to qualify under

this criterion. The recipient shall adopt and make public its standards for determining “affordable rents” for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low- and moderate- income households:

(A) The assistance is for an eligible activity to reduce the development cost of the substantial rehabilitation or conversion of a nonresidential structure to a multifamily, non-elderly rental housing project, or the new construction of a multifamily, non-elderly rental housing project;

(B) At least 20 percent of the units will be occupied by low- and moderate-income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(ii) When CDBG funds are used to assist rehabilitation eligible under § 570.202(b)(9) or (10) in direct support of the recipient's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the recipient's Rental Rehabilitation program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under § 570.201(k), such funds shall be considered to benefit low- and moderate-income persons if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met.

(4) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the full-time equivalent jobs involve the employment of low- and moderate-income persons. Poverty rates used in this paragraph shall be determined by

Census Bureau data provided by HUD. To qualify under this paragraph, the activity must meet the following criteria:

(i) For an activity that creates jobs, the recipient must document that at least 51 percent of the jobs will be held by, or will be available to, low- and moderate-income persons.

(ii) For an activity that retains jobs, the recipient must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided:

(A) The job is known to be held by a low- or moderate-income person; or

(B) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income person may be considered to be available to low- and moderate-income persons if:

(A) The assisted business does not require as a prerequisite special skill that can only be acquired with substantial training or work experience or education beyond high school, or the business agrees to hire unqualified persons and provide training; and

(B) The recipient and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) The person resides, or the assisted business through which the person is employed is located, within a census tract that meets the requirements of paragraph (a)(4)(v) of this section; or

(B) The person resides within a census tract that has at least 70 percent of its population who are low- and moderate-income persons.

(v) A census tract qualifies for the presumptions permitted under paragraph (a)(4)(iv)(A) of this section if it has a poverty rate of at least 20 percent and meets at least one of the following standards:

(A) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(B) Upon the written request by the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, deteriorated infrastructure, or substantial population decline.

(vi) Each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during each program year.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during each program year.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.209(b)(2)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during the program year, except as provided at paragraph (d)(7) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (a)(4)(vi)(F)(1) of this section) is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the facility/improvement between the date the recipient identifies the activity in its action plan under part 91 of this title and the date one year after the physical completion of the facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.209(b).

(b) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) The recipient demonstrates, supported by quantifiable data, that at least 25 percent of properties throughout the area experience a condition relating to physical or economic distress, such as abandoned or vacant properties, and/or known or suspected environmental contamination.

(iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the Housing Quality Standards (24 CFR 982.401).

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other

resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

Note 1 to paragraph (b). Activities which aid in the prevention or elimination of slums or blight: Despite the restrictions in paragraphs (b)(1) and (2) of this section, any rehabilitation activity which benefits low- and moderate-income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(c) Activities designed to meet community development needs having a particular urgency. In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the recipient certifies that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the recipient is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the certification by the recipient.

(d) Additional criteria. (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a “change of use” under § 570.505.

(2) Where the assisted activity is relocation assistance that the recipient is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary on the part of the grantee the recipient may qualify the assistance either on the basis of the national objective

addressed by the displacing activity or on the basis that the recipients of the relocation assistance are low and moderate income persons.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a)(1) of this section as well as those of paragraph (a)(4) of this section in order to qualify as benefiting low and moderate income persons.

(4) CDBG funds expended for planning and administrative costs under § 570.205 and § 570.206 will be considered to address the national objectives.

(5) Where the grantee has elected to prepare an area revitalization strategy pursuant to the authority of 24 CFR 91.215(g) and HUD has approved the strategy, the grantee may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities in the area for which, pursuant to the strategy, CDBG assistance is obligated during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(6) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the grantee may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of this paragraph under the criteria at paragraph (a)(1)(vii) of this section in lieu of the criteria at paragraph (a)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during the program year may be considered to be a single structure for purposes of applying the criteria at paragraph (a)(3) of this section.

(7) Where an activity meeting the criteria at § 570.209(b)(2)(v) may also meet the requirements of either paragraph (d)(5)(i) or (d)(6)(i) of this section, the grantee may elect to qualify the activity under either the area benefit criteria at paragraph (a)(1)(vii) of this section or the job aggregation criteria at paragraph (a)(4)(vi)(D) of this section, but not both. Where an activity may meet the job aggregation criteria at both paragraphs (a)(4)(vi)(D) and (E) of this section, the grantee may elect to qualify the activity under either criterion, but not both.

(e) *Timeframe to meet a national objective.* Recipients are required to demonstrate that activities carried out under this subpart meet a national objective within six years of the date of the initial drawdown of CDBG funds for that activity or the length of the period of performance and any extension permitted under § 570.509, whichever is shorter.

19. Amend § 570.209 as follows:

a. Remove and reserve paragraphs (b)(1) and (2);

b. Revise paragraph (b)(3);

c. Remove in paragraph (b)(4) wherever it appears the reference “(b)(3)(i)” and add in its place “(b)(3)(i) or (ii)”; and

d. Add paragraphs (b)(4)(iv) and (b)(5);

The revision and additions read as follows:

§ 570.209 Guidelines for evaluating and selecting economic development projects.

* * * * *

(b) * * *

(3) *Standards for individual activities.* (i) Any activity subject to these guidelines which falls into one or more of the following categories may be assisted with CDBG funds if the amount of CDBG assistance is equal to or less than either of the following:

(A) \$100,000 per full-time equivalent, permanent job created or retained; or

(B) \$2,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) Any activity subject to these guidelines carried out pursuant to subpart M may be assisted with CDBG funds if HUD, through written approval, calculates that the cost of the activity on a net present value basis does not exceed the following amount of CDBG assistance:

(A) \$50,000 per full-time equivalent, permanent job created or retained; or

(B) \$1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(iii) An activity subject to these guidelines may be assisted with CDBG funds, if HUD determines in writing, based upon the written request of the recipient, that the recipient has demonstrated that the activity would result in a significant contribution to the goals and purposes of the CDBG program and the activity:

(A) Would not result in a violation of a statutory provision or any other regulatory provision; and

(B) Would not result in undue hardship to the recipient or beneficiaries of the activity.

(iv) Any activity which consists of or includes any of the following will be considered by HUD to provide insufficient public benefit and may not be assisted with CDBG funds:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified;

and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

* * * * *

(4) * * *

(iv) The cost of an activity pursuant to (b)(3)(ii) of this section shall be determined by applying the procedures described in a notice issued by HUD.

(5) *Updating the individual activity standards.* The standards in paragraphs (b)(3)(i) and (ii) of this section may be updated by issuance of a document in the Federal Register specifying the revised standards.

* * * * *

20. Amend § 570.210 by revising paragraph (b)(2) to read as follows:

§ 570.210 Prohibition on use of assistance for employment relocation activities.

* * * * *

(b) * * *

(2) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the BLS. An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, an LMA is either an area defined by the BLS as an LMA, or a State may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain

records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined. However, a non-metropolitan LMA can be combined with a metropolitan LMA if it is for business reasons such as code enforcement compliance, necessary for expansion, necessary for transportation or supply chain access. Grantees must document the business reason for the combination of a non-metropolitan LMA with a metropolitan LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

* * * * *

21. Amend § 570.307 as follows:

a. Remove in paragraphs (b)(1) and (d)(1) “§ 570.3(3)” and add in its place “§ 570.3”;

and

b. Add paragraph (h);

The addition reads as follows:

§ 570.307 Urban counties.

* * * * *

(h) *Timeline.* Urban counties are required to complete the qualification or requalification process to qualify as an urban county no later than September 30 of the year of qualification or requalification.

Subpart E [Removed and Reserved]

22. Remove and reserve subpart E, consisting of §§ 570.400 through 570.416.

Subpart G [Removed and Reserved]

23. Remove and reserve subpart G, consisting of §§ 570.450 through 570.466.

24. Amend § 570.481 by adding paragraph (a)(4) to read as follows:

§ 570.481 Definitions.

(a) * * *

(4) *Period of performance* means the time period beginning on HUD’s approval of a grant agreement for a given grant and ending six years from that date. For loan guarantees issued pursuant to subpart M of this part, the period of performance means the time period beginning on the date of HUD’s guarantee of a promissory note or other obligation and ending six years from that date.

* * * * *

25. Amend § 570.482 as follows:

- a. Remove in paragraphs (c)(1) and (c)(2)(i) the text “section 105(a)(23)” and add in their places “section 105(a)(22)”;
- b. Remove and reserve paragraphs (f)(2) and (3);
- c. Revise paragraph (f)(4);
- d. Remove in paragraph (f)(5)(i) the reference “(f)(4)(i)” and add in its place “(f)(4)(i) or (ii)”;
- e. Remove in paragraphs (f)(5)(ii) and (iii) the reference “(f)(4)(i)” and adding in their places “(f)(4)(i) and (ii)”;
- f. Add paragraph (f)(5)(iv);
- g. Redesignate paragraph (f)(6) as paragraph (f)(7);
- h. Add new paragraph (f)(6); and
- i. Revise paragraph (h)(2)(ii);

The revisions and additions read as follows:

§ 570.482 Eligible activities.

* * * * *

(f) * * *

(4) *Standards for individual activities.* (i) Any activity subject to these standards which falls into one or more of the following categories may be assisted with CDBG funds if the amount of CDBG assistance is equal to or less than either of the following:

(A) \$100,000 per full-time equivalent, permanent job created or retained; or

(B) \$2,000 per low- and moderate-income person to which goods or services are provided by the activity.

(ii) Any activity subject to these standards carried out pursuant to subpart M may be assisted with CDBG funds if HUD, through written approval, calculates that the cost of the activity on a net present value basis does not exceed the following amount of CDBG assistance:

(A) \$50,000 per full-time equivalent, permanent job created or retained; or

(B) \$1,000 per low- and moderate-income person to which goods or services are provided by the activity.

(iii) An activity subject to these standards may be assisted with CDBG funds, if HUD determines in writing, based upon the written request of the recipient, that the recipient has demonstrated that the activity would result in a significant contribution to the goals and purposes of the CDBG program and the activity:

(A) Would not result in a violation of a statutory provision or any other regulatory provision; and

(B) Would not result in undue hardship to the recipient or beneficiaries of the activity.

(iv) Any activity which consists of or includes any of the following will be considered by HUD to provide insufficient public benefit and may not be assisted with CDBG funds:

(A) General promotion of the community as a whole (as opposed to the promotion of specific areas and programs);

(B) Assistance to professional sports teams;

(C) Assistance to privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons;

(D) Acquisition of land for which the specific proposed use has not yet been identified;
and

(E) Assistance to a for-profit business while that business or any other business owned by the same person(s) or entity(ies) is the subject of unresolved findings of noncompliance relating to previous CDBG assistance provided by the recipient.

* * * * *

(5) * * *

(iv) The cost of an activity pursuant to paragraph (b)(3)(i) of this section shall be determined by applying the procedures described in a notice issued by HUD.

(6) *Updating the individual activity standards.* The standards in paragraphs (b)(3)(i) and (ii) of this subsection may be updated by issuance of a document in the Federal Register specifying the revised standards.

* * * * *

(h) * * *

(2) * * *

(ii) *Labor market area (LMA).* For metropolitan areas, an LMA is an area defined as such by the U.S. Bureau of Labor Statistics (BLS). An LMA is an economically integrated geographic area within which individuals can live and find employment within a reasonable distance or can readily change employment without changing their place of residence. In addition, LMAs are nonoverlapping and geographically exhaustive. For metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the affected business is currently located and from which current jobs may be lost. For non-metropolitan areas, grantees must use employment data, as defined by the BLS, for the LMA in which the assisted business is currently

located and from which current jobs may be lost. For non-metropolitan areas, a LMA is either an area defined by the BLS as an LMA, or a State may choose to combine non-metropolitan LMAs. States are required to define or reaffirm prior definitions of their LMAs on an annual basis and retain records to substantiate such areas prior to any business relocation that would be impacted by this rule. Metropolitan LMAs cannot be combined. However, a non-metropolitan LMA can be combined with a metropolitan LMA if it is for business reasons such as code enforcement compliance, necessary for expansion, necessary for transportation or supply chain access. Grantees must document the business reason for the combination of a non-metropolitan LMA with a metropolitan LMA. For the Insular Areas, each jurisdiction will be considered to be an LMA. For the HUD-administered Small Cities Program, each of the three participating counties in Hawaii will be considered to be its own LMA. Recipients of Fiscal Year 1999 Small Cities Program funding in New York will follow the requirements for State CDBG recipients.

* * * * *

26. Revise and republish § 570.483 to read as follows:

§ 570.483 Criteria for national objectives.

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required to section 104(b)(3) of the Act. (HUD is willing to consider a waiver of these requirements in accordance with § 570.480(b)).

(b) *Activities benefiting low- and moderate-income persons.* Activities meeting the criteria in this paragraph (b) will be considered to benefit low- and moderate-income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The recipient shall appropriately ensure that activities that meet these criteria do not benefit moderate-income persons to the exclusion of low-income persons.)

(1) *Area benefit activities.* (i) An activity, the benefits of which are available to all the residents in a primarily residential area, where at least 51 percent of the residents are low- and moderate-income persons. The activity must serve the entire area, but the area served need not be coterminous with census tracts or other officially recognized boundaries.

(ii) An activity, where the assistance is to a public improvement that provides benefits to all the residents of an area, that is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii)(A) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(1) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the State a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(2) At least 51 percent of the use of the system will be by low- and moderate-income persons. The State's certification may be based upon information which identifies the total number of calls actually received over the preceding twelve-month period for each of the emergency services to be covered by the emergency telephone number system and relates those calls to the geographic segment (expressed as nearly as possible in terms of census tracts, enumeration districts, block groups, or combinations thereof that are contained within the segment) of the service area from which the calls were generated. In analyzing this data to meet the requirements of this section, the State will assume that the distribution of income among callers generally reflects the income characteristics of the general population residing in the same geographic area where the callers reside. Alternatively, the State's certification may be based

upon other data, agreed to by HUD and the State, which shows that over the preceding twelve-month period the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low- and moderate-income persons.

(3) Other Federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a statement explaining whether the problem is caused by the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(4) Demonstrate that the percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low- and moderate-income persons residing in the service area of the system. For this purpose, the recipient must include a description of the boundaries of the service area of the emergency telephone number system, the census divisions that fall within the boundaries of the service area (census tracts or block groups), the total number of persons and the total number of low- and moderate-income persons residing within each census division, the percentage of low- and moderate-income persons residing within the service area, and the total cost of the system.

(B) The certifications of the State must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(iv) Activities meeting the requirements of paragraph (e)(4)(i) of this section may be considered to qualify under this paragraph (b)(1).

(v) HUD will consider activities meeting the requirements of paragraph (e)(5)(i) of this section to qualify under paragraph (b)(1) of this section, provided that the area covered by the strategy meets one of the following criteria:

(A) The area is in a federally designated Empowerment Zone or Enterprise Community;

(B) The area is primarily residential and contains a percentage of low and moderate income residents that is no less than 70 percent;

(C) All of the census tracts (or block numbering areas) in the area have poverty rates of at least 20 percent, at least 90 percent of the census tracts (or block numbering areas) in the area have poverty rates of at least 25 percent, and the area is primarily residential. (If only part of a census tract or block numbering area is included in a strategy area, the poverty rate shall be computed for those block groups (or any part thereof) which are included in the strategy area.)

(D) Upon request by the State, HUD may grant exceptions to the 70 percent low and moderate income or 25 percent poverty minimum thresholds on a case-by-case basis. In no case, however, may a strategy area have both a percentage of low and moderate income residents less than 51 percent and a poverty rate less than 20 percent.

(2) *Limited clientele activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low- or moderate-income persons.

(ii) To qualify under this paragraph (b)(2), the activity must meet one or the following tests:

(A) Benefit at least one of the following clientele, which are presumed to be low- and moderate-income persons: abused children; survivors of domestic violence; elderly persons (see 570.3 for definition of elderly); adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled;" homeless persons; illiterate adults (adults unable to read and write in English and in their first languages if their first language is not English); persons living with AIDS; migrant farm workers; persons who meet the Federal poverty guidelines; persons insured by Medicaid; or

(B) Require information on family size and income that demonstrates that at least 51 percent of the clientele are persons whose family income does not exceed the low- and moderate-income limit; or

(C) It must have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) It must be of such a nature, and be in such a location, that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(iii) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or of adults meeting the Bureau of the Census' Current Population Reports definition of "severely disabled" will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(A) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under paragraph (b)(1) of this section;

(B) The rehabilitation of a privately owned nonresidential building or improvement that does not qualify under paragraph (b)(1) or (4) of this section; or

(C) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit and that does not qualify under paragraph (b)(3) of this section.

(iv) A microenterprise assistance activity (carried out in accordance with the provisions of section 105(a)(23) of the Act or § 570.482(c) and limited to microenterprises) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity who are low- and moderate-income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify as such for up to a three-year period.

(v) An activity designed to provide job training and placement and/or other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low- and moderate-income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstances:

(A) In such cases where such training or provision of supportive services is an integrally-related component of a larger project, the only use of CDBG assistance for the project is to provide the job training and/or supportive services; and

(B) The proportion of the total cost of the project borne by CDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(vi) The following kinds of activities may not qualify under paragraph this (b)(2): activities that provide benefits to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (b)(2)(iv) of this section.

(3) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures that, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property by the unit of general local government, a subrecipient, an entity eligible to receive assistance under section 105(a)(15) of the Act, a developer, an individual homebuyer, or an individual homeowner; conversion of nonresidential structures; and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. If two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. If housing activities being assisted meet the requirements of paragraph (e)(4)(ii) or (e)(5)(ii) of this section, all such housing may also be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining “affordable rents” for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low- and moderate-income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the substantial rehabilitation or conversion of a nonresidential structure to a multifamily, non-elderly rental housing project, or the new construction of a multifamily, non-elderly rental housing project;

(B) At least 20 percent of the units will be occupied by low- and moderate-income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(ii) Where CDBG funds are used to assist rehabilitation delivery services or in direct support of the unit of general local government's Rental Rehabilitation Program authorized under 24 CFR part 511, the funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation Program overall are for low and moderate income persons.

(iii) When CDBG funds are used for housing services eligible under section 105(a)(21) of the Act, if the housing units for which the services are provided are HOME-assisted and the requirements at 24 CFR 92.252 or 92.254 are met

(4) *Job creation or retention activities.* (i) An activity designed to create or retain permanent jobs where at least 51 percent of the full-time equivalent jobs involve the employment of low- and moderate-income persons. Poverty rates used in this paragraph shall be determined by Census Bureau data provided by HUD.

(ii) For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the

following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover.

(iii) Jobs that are not held or filled by a low- or moderate-income persons may be considered to be available to low- and moderate-income persons if:

(A) The assisted business does not require as a prerequisite special skills that can only be acquired with substantial training or work experience or education beyond high school, or the business agrees to hire unqualified persons and provide training; and

(B) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(iv) For purposes of determining whether a job is held by or made available to a low- or moderate-income person, the person may be presumed to be a low- or moderate-income person if:

(A) The person resides, or the assisted business through which the person is employed is located, within a census tract that meets the requirements of paragraph (b)(4)(v) of this section; or

(B) The person resides within a census tract that has a population of low- and moderate-income persons of at least 70 percent of the block group.

(v) A census tract qualifies for the presumptions permitted under paragraph (b)(4)(iv)(A) of this section if it has a poverty rate of at least 20 percent and meets at least one of the following standards:

(A) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20 percent; or

(B) Upon the written request by the recipient, HUD determines that the census tract exhibits other objectively determinable signs of general distress such as high incidence of crime, narcotics use, homelessness, abandoned housing, deteriorated infrastructure, or substantial population decline.

(vi) Each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except:

(A) In certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by CDBG funds.

(B) Where CDBG funds are used to pay for the staff and overhead costs of an entity specified in section 105(a)(15) of the Act making loans to businesses exclusively from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(C) Where CDBG funds are used by a recipient or subrecipient to provide technical assistance to businesses, this requirement may be met by aggregating the jobs created or retained by all of the businesses receiving technical assistance during any one-year period.

(D) Where CDBG funds are used for activities meeting the criteria listed at § 570.482(f)(3)(v), this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(E) Where CDBG funds are used by a Community Development Financial Institution to carry out activities for the purpose of creating or retaining jobs, this requirement may be met by aggregating the jobs created or retained by all businesses for which CDBG assistance is obligated for such activities during any one-year period, except as provided at paragraph (e)(6) of this section.

(F) Where CDBG funds are used for public facilities or improvements which will result in the creation or retention of jobs by more than one business, this requirement may be met by aggregating the jobs created or retained by all such businesses as a result of the public facility or improvement.

(1) Where the public facility or improvement is undertaken principally for the benefit of one or more particular businesses, but where other businesses might also benefit from the assisted activity, the requirement may be met by aggregating only the jobs created or retained by those businesses for which the facility/improvement is principally undertaken, provided that the cost (in CDBG funds) for the facility/improvement is less than \$10,000 per permanent full-time equivalent job to be created or retained by those businesses.

(2) In any case where the cost per job to be created or retained (as determined under paragraph (b)(4)(vi)(F)(1) of this section) is \$10,000 or more, the requirement must be met by aggregating the jobs created or retained as a result of the public facility or improvement by all businesses in the service area of the facility/improvement. This aggregation must include businesses which, as a result of the public facility/improvement, locate or expand in the service area of the public facility/improvement between the date the State awards the CDBG funds to the recipient and the date one year after the physical completion of the public facility/improvement. In addition, the assisted activity must comply with the public benefit standards at § 570.482(f).

(5) *Planning-only activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activity is unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) *Activities which aid in the prevention or elimination of slums or blight.* Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) *Activities to address slums or blight on an area basis.* An activity will be considered to address prevention or elimination of slums or blight in an area if the State can determine that:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) The unit of general local government demonstrates, supported by quantifiable data, that at least 25 percent of properties throughout the area experience a condition relating to physical or economic distress, such as abandoned or vacant properties, and/or known or suspected environmental contamination.

(iii) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard under local definition before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is undertaken. At a minimum, the local definition for this purpose must be such that buildings that it would render substandard would also fail to meet the Housing Quality Standards (24 CFR 982.401)..

Note 1 to paragraph (c)(1). Documentation is to be maintained by the unit of general local government on the boundaries of the area and the conditions and standards used that qualified the area at the time of its designation. The unit of general local government shall maintain records to substantiate how the area met the slums or blighted criteria. The designation of an area as slum or blighted under this section is required to have been determined within the last 10 years. Documentation must be retained pursuant to the recordkeeping requirements contained at § 570.506(b)(8)(ii).

(2) *Activities to address slums or blight on a spot basis.* The following activities may be undertaken on a spot basis to eliminate specific conditions of blight, physical decay, or environmental contamination that are not located in a slum or blighted area: acquisition; clearance; relocation; historic preservation; remediation of environmentally contaminated properties; or rehabilitation of buildings or improvements. If acquisition or relocation is undertaken, it must be a precursor to another eligible activity (funded with CDBG or other resources) that directly eliminates the specific conditions of blight or physical decay, or environmental contamination.

Note 2 to paragraph (c): Activities which aid in the prevention or elimination of slums or blight: Despite the restrictions in paragraphs (c)(1) and (2) of this section, any rehabilitation activity which benefits low and moderate income persons pursuant to paragraph (a)(3) of this section can be undertaken without regard to the area in which it is located or the extent or nature of rehabilitation assisted.

(d) *Activities designed to meet community development needs having a particular urgency.* In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies, and the State determines, that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

(e) *Additional criteria.* (1) In any case where the activity undertaken is a public improvement and the activity is clearly designed to serve a primarily residential area, the activity must meet the requirements of paragraph (b)(1) of this section whether or not the requirements of

paragraph (b)(4) of this section are met in order to qualify as benefiting low- and moderate-income persons.

(2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a “change of use” under § 570.489(j).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, the relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or, if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefiting low and moderate income persons.

(4) Where CDBG-assisted activities are carried out by a Community Development Financial Institution whose charter limits its investment area to a primarily residential area consisting of at least 51 percent low- and moderate-income persons, the unit of general local government may also elect the following options:

(i) Activities carried out by the Community Development Financial Institution for the purpose of creating or retaining jobs may, at the option of the unit of general local government, be considered to meet the requirements of this paragraph under the criteria at paragraph (b)(1)(iv) of this section in lieu of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities for which the Community Development Financial Institution obligates CDBG assistance during any one-year period may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(5) If the unit of general local government has elected to prepare a community revitalization strategy pursuant to the authority of 24 CFR 91.315(e)(2), and the State has approved the strategy, the unit of general local government may also elect the following options:

(i) Activities undertaken pursuant to the strategy for the purpose of creating or retaining jobs may, at the option of the grantee, be considered to meet the requirements of paragraph (b) of this section under the criteria at paragraph (b)(1)(v) of this section instead of the criteria at paragraph (b)(4) of this section; and

(ii) All housing activities in the area undertaken pursuant to the strategy may be considered to be a single structure for purposes of applying the criteria at paragraph (b)(3) of this section.

(6) If an activity meeting the criteria in § 570.482(f)(3)(v) also meets the requirements of either paragraph (e)(4)(i) or (e)(5)(i) of this section, the unit of general local government may elect to qualify the activity either under the area benefit criteria at paragraph (b)(1)(iv) or (v) of this section or under the job aggregation criteria at paragraph (b)(4)(vi)(D) of this section, but not under both. Where an activity may meet the job aggregation criteria at both paragraphs (b)(4)(vi)(D) and (E) of this section, the unit of general local government may elect to qualify the activity under either criterion, but not both.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

(g) *Timeline to meet a national objective.* Recipients are required to demonstrate that activities carried out under section 105(a) of the Act meet a national objective within six years of

the date of the initial drawdown of CDBG funds for that activity or the length of the period of performance and any extension permitted, whichever is shorter.

27. Amend § 570.489 as follows:

- a. Revise paragraph (e)(2)(iv)(C);
- b. Add paragraphs (e)(3)(ii)(C) and (f)(4); and
- c. Revise paragraph (h)(4)(i);

The revisions and additions read as follows:

§ 570.489 Program administrative requirements.

* * * * *

(e) * * *

(2) * * *

(iv) * * *

(C) Interest income received by units of general local government on deposits of grant funds before disbursement of the funds for activities, except that the unit of general local government may keep interest payments in an amount not to exceed the amount provided by 2 CFR 200.305(b)(9) per year for administrative expenses otherwise permitted to be paid with CDBG funds.

* * * * *

(3) * * *

(ii) * * *

(C) The State must require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the State for activities, except as provided in paragraph (f) of this section.

* * * * *

(f) * * *

(4) A State is responsible for ensuring that funds in a revolving loan fund are being used to continue the activity which generated the program income.

* * * * *

(h) * * *

(4) * * *

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict (public disclosure is considered a combination of any of the following: publication on the recipient’s website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers), evidence of the public disclosure, and a description of how the public disclosure was made;

* * * * *

§ 570.490 [Amended]

28. Amend § 570.490 in paragraph (a)(2) by removing “24 CFR 91.320(j)(1)” and adding in its place “24 CFR 91.320(k)(1)”.

29. Amend § 570.495 by revising paragraph (a)(4) to read as follows:

§ 570.495 Reviews and audits response.

(a) * * *

(4) Advise the State to reimburse its grant in any amounts improperly expended, using non-Federal funds. In lieu of reimbursing its grant, the State may elect to request a voluntary grant reduction from a current or future year’s allocation of funds. A request for a voluntary grant reduction must be signed by the State’s chief elected official. In its request, the State must waive its right to a hearing pursuant to § 570.496;

* * * * *

§ 570.500 [Amended]

30. Amend § 570.500 by removing and reserving paragraph (a)(4)(ii).

31. Amend § 570.503 by revising paragraph (b)(7)(i) to read as follows:

§ 570.503 Agreements with subrecipients.

* * * * *

(b) * * *

(7) * * *

(i) Used to meet one of the national objectives in § 570.208 until six years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the recipient; or

* * * * *

32. Amend § 570.504 as follows:

- a. Revise paragraph (b)(2)(iii);
- b. Remove in paragraph (c) “§ 570.503(b)(8)” and add in its place “§ 570.503(b)(7)”; and
- c. Add paragraph (f).

The revision and addition read as follows:

§ 570.504 Program income.

* * * * *

(b) * * *

(2) * * *

(iii) At the end of each program year, the aggregate amount of program income cash balances and any investment thereof (except those needed for immediate cash needs, cash balances of a revolving loan fund, cash balances from a lump-sum drawdown, or cash or investments held for section 108 loan guarantee security needs) that, as of the last day of the program year, exceeds one-twelfth of the most recent grant made pursuant to § 570.304 shall be remitted to HUD as soon as practicable thereafter and sent to the United States Treasury FRB New York, New York, NY, U.S. Department of Housing and Urban Development, ABA Routing Number 021030004, Account Number 86010300. The memorandum section should

read: Recipient Name (e.g., city of Apple), Attention: HUD CPD/CDBG, Account Code 86X6760, \$(dollar amount), "Returning Excess Program Income." This provision applies to program income cash balances and investments thereof held by the grantee and its subrecipients. (This provision shall be applied for the first time at the end of the program year for which Federal Fiscal Year 1996 funds are provided.)

* * * * *

(f) *Transfer of revolving loan funds.* A grantee may elect to terminate or to reduce the balance of an existing revolving loan fund and reprogram some or all of the remaining funds to other activities. The process of reprogramming funds out of a revolving loan fund shall be governed by 24 CFR 91.505; once transferred out of the revolving loan fund, the program income is subject to the requirements of paragraphs (a) through (d) of this section. If HUD determines that a revolving loan fund no longer meets the definition of a revolving loan fund under § 570.500(b) because of a lack of loan activity or because loan fund balances significantly exceed the amount necessary to support loan activity, HUD may take corrective actions.

33. Amend § 570.506 by adding a sentence to the end of paragraph (b)(5)(ii)(C) and revising paragraphs (b)(7) and (8), (c)(1), (d), and (e) to read as follows:

§ 570.506 Records to be maintained.

* * * * *

(b) * * *

(5) * * *

(ii) * * *

(C) * * * For each such low- and moderate-income person hired, the size

and annual income of the person's family prior to the person being hired for the job. In lieu of businesses obtaining information regarding the size and annual income of the person's family, the recipient may obtain and maintain such information.

* * * * *

(7) For purposes of documenting, pursuant to paragraph (b)(5)(i)(B), (b)(5)(ii)(C), or (b)(6)(iii) or (v) of this section that the person for whom a job was either filled by or made available to a low- or moderate-income person:

(i) In lieu of maintaining records showing the person's family size and income, the recipient may substitute records showing for each person employed, the name of the business, type of job, and the annual wages or salary of the job. HUD will consider the person income-qualified if the annual wages or salary of the job is at or under the HUD-established income limit for a one-person family.

(ii) Based upon the census tract where the person resides or in which the business is located, the recipient, in lieu of maintaining records showing the person's family size and income, may substitute records showing either the person's address at the time the determination of income status was made or the address of the business providing the job, as applicable, the census tract in which that address was located, the percent of persons residing in that tract who either are in poverty or who are low- and moderate-income, as applicable, the data source used for determining the percentage, and a description of the pervasive poverty and general distress in the census tract in sufficient detail to demonstrate how the census tract met the criteria in §570.208(a)(4)(v), as applicable.

(8) For each activity determined to aid in the prevention or elimination of slums or blight based on addressing one or more of the conditions which qualified an area as a slum or blighted area:

(i) The boundaries of the area;

(ii) A designation, within the last 10 years, of the area as slum or blighted; and

(iii) Quantifiable data substantiating the conditions and standards that qualified the area at the time of its designation.

* * * * *

(c) * * *

(1) Records that demonstrate that the recipient has made the determinations required as a condition of eligibility of certain activities, as prescribed in §§ 570.201(e)(1), (f), (i)(2), (p), and (q), 570.202(b)(3), 570.206(f), 570.209, 570.210, and 570.309.

* * * * *

(d) Records which demonstrate compliance with § 570.503(b)(7) and (8) or § 570.505 regarding maintenance of property condition and change of use of real property acquired or improved with CDBG assistance.

(e) Records that demonstrate compliance with the citizen participation requirements prescribed in 24 CFR part 91, subpart B, for entitlement recipients, or in 24 CFR part 91, subpart C, for HUD-administered small cities recipients, and subpart F for all recipients.

* * * * *

34. Amend § 570.507 by revising paragraph (d) to read as follows:

§ 570.507 Reports.

* * * * *

(d) *Reports*—(1) *Reporting of CDBG funds*. Recipients must collect and report data on their use of CDBG funds in the Integrated Disbursement and Information System (IDIS), or any successor reporting system, as specified by HUD.

(2) *Other reports*. Recipients may be required to submit such other reports and information as HUD determines are necessary to carry out its responsibilities under the Act or other applicable laws.

35. Revise § 570.509 to read as follows:

§ 570.509 Grant closeout procedures.

This section implements 2 CFR 200.344 as applicable in the context of the CDBG program. This section specifies the actions a grantee and HUD must take to complete the closeout process.

(a) *Final financial, performance and other reports.* In general, no later than 90 days after the end of the period of performance or no later than 90 days after the end of the program year in which the grantee expends all funds from the origin year grant (whichever comes first), the grantee must submit all financial, performance, and other reports as required by 24 CFR 91.520.

(b) *Liquidation of obligations.* In general, a grantee must liquidate all obligations incurred under the origin year grant not later than 90 calendar days after the end date of the period of performance as specified in § 570.3.

(c) *Closeout phases.* Closeout of an origin year grant may occur in two phases if the Grant funds were expended to assist an activity(ies) that is incomplete at the time the final report is due to HUD. The two phases are:

(1) Account closeout, in which HUD removes the recipient's access to grant funds and removes the grant from the grantee's line of credit.

(2) Programmatic closeout, which marks completion of all programmatic requirements associated with a grant. Programmatic requirements include but are not limited to: physical completion of all activities for which funds were expended from the original year grant; all activities have met a national objective under § 570.208; and the grantee has reported on all accomplishments resulting from the activities.

(d) *Extensions.* (1) Extension to allow for programmatic closeout for activities for which funds have been disbursed but which have not been completed:

(i) If the grantee has expended all grant funds at the time the final reports are due to HUD, but has not yet completed one or more activities to meet programmatic requirements, as defined in paragraph (c)(2) of this section, HUD may authorize an extension of the end date of the period of performance by up to two years for completion of an activity(ies) and up to the time period allowed at § 570.208 to meet a national objective.

(ii) However, this extension does not apply to the availability of any funds remaining in a grant's line of credit and HUD will initiate account closeout.

(iii) The recipient must submit an interim version of the final reports in accordance with and as required in paragraph (a) of this section, specifically noting any incomplete assisted activity. At the end of the extension period, or when the activity(ies) is completed, whichever is earlier, the grantee must submit the final reports including any required information regarding that activity(ies).

(2) Specific extensions for good cause. A grantee may request, and HUD may provide, an extension of the period of performance, deadlines for reporting, or deadline for obligation liquidation for a grant provided good cause is demonstrated.

(e) *Refund of unobligated balances.* At account closeout, the grantee must promptly refund any balances of unobligated cash paid in advance or paid and that is not authorized to be retained by the grantee. All such refunds must be completed prior to submission of the reports required in paragraph (a) of this section.

(f) *Accounting for real property.* In the reports required under paragraph (a) of this section, the grantee must account for any real property acquired with grant funds.

(g) *Closeout actions.* In general, HUD will complete all closeout actions for a grant no later than one year after receipt and acceptance of all required final reports. In completing closeout actions, HUD will review the responsibilities and performance of the recipient under the grant agreement, applicable laws and regulations. HUD may delay programmatic closeout if it finds a further Federal interest in keeping the grant agreement open for the purpose of securing performance.

(1) HUD will cancel any unused portion of the awarded grant, as shown in the executed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the recipient shall be refunded to HUD. Any funds which have exceeded the statutory time limit on the use of funds will be recaptured by the U.S. Treasury pursuant to 24 CFR 570.200(k).

(2) Any costs paid with CDBG funds which were not audited previously shall be subject to coverage in the recipient's next single audit performed in accordance with HUD regulations implementing the Single Audit Act requirements at 2 CFR part 200. The recipient may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(3) Prior to completing account closeout, HUD will identify for the grant recipient any unused grant funds to be canceled by HUD and provide the grant recipient an opportunity to respond.

(h) *After closeout.* (1) HUD may monitor the recipient's compliance and performance after the closeout of the award with respect to the following actions, and HUD may take findings of noncompliance into account, as unsatisfactory performance of the recipient, in the consideration of any future grant award under this part:

(i) Closeout costs (*e.g.*, audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (g)(1) of this section. Contingent liabilities include, but are not limited to, third-party claims against the recipient, as well as related administrative costs;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in §§ 570.503(b)(7) and 570.505;

(iii) Compliance with requirements governing future program income or receivables generated from activities funded from the origin year grant, as described in §570.504(b)(4) and (5);

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period; and

(v) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations of this section.

(2) The recipient is responsible for:

(i) Compliance with all program requirements, certifications, and assurances in using any remaining CDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with CDBG funds in accordance with the principles described in §§ 570.503(b)(7) and 570.505;

(iii) Compliance with requirements governing future program income or receivables generated from activities funded from the origin year grant, as described in § 570.504(b)(4) and (5);

(iv) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period; and

(v) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations of this section.

(i) Status of consolidated plan after closeout. The Consolidated Plan will remain in effect after closeout until the expiration of the program year covered by the last approved consolidated plan pursuant to 24 CFR 91.520.

(j) *Termination of grant—(1) For convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 2 CFR 200.340. The recipient shall not incur new obligations for the terminated portions after the effective date and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the recipient for those portions of obligations which could not be canceled and which had been properly incurred by the recipient in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR part 50 or 24 CFR part 58, as applicable, shall be determined as part of the closeout process.

(2) *For cause.* In cases in which the Secretary terminates the recipient's grant under the authority of subpart O of this part, or under the terms of the grant agreement, the closeout

policies contained in this section shall apply, except where the approved grant is cancelled in its entirety. The provisions in 2 CFR 200.343 on the effects of termination shall also apply. HUD shall determine whether an environmental review is required, and if so, HUD shall perform it in accordance with 24 CFR part 50.

§ 570.600 [Amended]

36. Amend § 570.600 in paragraph (a) by removing “§ 570.405 and”.

§ 570.606 [Amended]

37. Amend § 570.606 in paragraph (b)(2)(ii)(C) by removing “49 CFR 24.2(g)(2)” and adding in its place “49 CFR 24.2(a)(9)(ii)”.

38. Amend § 570.611 by revising paragraphs (a)(2) and (d)(1)(i) to read as follows:

§ 570.611 Conflict of interest.

(a) * * *

(2) In all cases not governed by 2 CFR 200.317 and 200.318, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient or by its subrecipients to individuals, businesses, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities pursuant to § 570.202; or grants, loans, and other assistance to businesses, individuals, and other private entities pursuant to § 570.203, § 570.204, or § 570.703(i)).

* * * * *

(d) * * *

(1) * * *

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict (public disclosure is considered a combination of any of the following: publication on the recipient’s website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as

libraries, grocery store bulletin boards, and neighborhood centers), evidence of the public disclosure, and a description of how the public disclosure was made; and

* * * * *

§ 570.613 [Removed and Reserved]

39. Remove and reserve § 570.613.

40. Amend § 570.703 by revising paragraph (f) and removing and reserving paragraph (j).

The revision reads as follows:

§ 570.703 Eligible activities.

* * * * *

(f) Site preparation either related to the redevelopment or use of the real property acquired or rehabilitated pursuant to paragraphs (a) and (b) of this section, or for an economic development purpose, including:

(1) Construction, reconstruction, installation of public and other site improvements, utilities or facilities (other than buildings); or

(2) Remediation of properties (remediation can include project-specific environmental assessment costs not otherwise eligible under § 570.205) with known or suspected environmental contamination.

* * * * *

41. Amend § 570.704 as follows:

a. Revise paragraphs (a)(2)(i)(B), (b) introductory text, and (b)(1) and (2);

b. Remove and reserve paragraphs (b)(3) and (4);

c. Revise paragraphs (b)(8)(iii), (v), and (ix);

d. Add paragraphs (b)(8)(xi) and (xii) and (c)(3)(vii); and

e. Revise paragraph (c)(4).

The revisions and additions read as follows:

§ 570.704 Application requirements.

(a) * * *

(2) * * *

(i) * * *

(B) Activities that may be undertaken with guaranteed loan funds;

* * * * *

(b) *Submission requirements.* An application for loan guarantee assistance may be submitted at any time. The application (or plan submission described in paragraph (a)(1)(v) of this section) shall be submitted to the HUD headquarters office that administers loan guarantees under this subpart and shall include the following:

(1) A description of how each of the activities to be carried out with the guaranteed loan funds meets the eligible activity criteria in § 570.703 and the national objectives criteria in § 570.208 or § 570.483, as applicable.

(2) A schedule for repayment of the loan which identifies the sources of repayment, together with a statement identifying the entity that will act as borrower and issue the debt obligations, and the source of the payment of fees required by § 570.712.

* * * * *

(8) * * *

(iii) It has, prior to submission of its application to HUD: furnished citizens with information required by paragraph (a)(2)(i) of this section; held at least one public hearing to obtain the views of citizens on community development needs; and prepared its application in accordance with paragraph (a)(1)(iv) or (v) of this section, as applicable, and made the application available to the public;

* * * * *

(v) It will affirmatively further fair housing, and the guaranteed loan funds will be administered in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the Fair Housing Act (42 U.S.C. 3601-3619), and implementing regulations;

* * * * *

(ix) (Where applicable, the public entity may also include the following additional certification.) It lacks sufficient resources from funds provided under this subpart or program income to allow it to comply with the provisions of § 570.200(c)(2), and it must therefore assess properties owned and occupied by moderate income persons, to recover the non-guaranteed loan funded portion of the capital cost without paying such assessments on their behalf from guaranteed loan funds;

* * * * *

(xi) It possesses the legal authority to make the pledge of grants required under § 570.705(b)(2).

(xii) It has made efforts to obtain financing for activities described in the application without the use of the loan guarantee, the public entity will maintain documentation of such efforts for the term of the loan guarantee, and the public entity cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

* * * * *

(c) * * *

(3) * * *

(vii) Activities to be undertaken with the guaranteed loan funds do not meet the public benefit standards under § 570.209.

(4) HUD will notify the public entity or State in writing that the loan guarantee request has either been approved (in the requested amount or a portion thereof) or disapproved. If the request is approved in an amount less than requested or disapproved, the public entity or State shall be informed of the specific reasons for disapproval or partial approval. If the request is

approved, either in full or in part, HUD shall issue an offer of commitment to guarantee debt obligations of the borrower identified in the application subject to compliance with this part, including the requirements under § 570.705(b), (d), (g) and (h) for securing and issuing debt obligations, the conditions for release of funds described in paragraph (d) of this section, and such other conditions as HUD may specify in the commitment documents in a particular case.

* * * * *

42. Amend § 570.705 as follows:

- a. Revise paragraph (a)(1)(iii);
- b. Remove paragraphs (a)(2)(iii)(A) through (C); and
- c. Revise paragraph (b)(3).

The revisions read as follows:

§ 570.705 Loan requirements.

(a) * * *

(1) * * *

(iii) The amount any one public entity may receive may be limited to such amount as is necessary to allow HUD to give priority to applications containing activities to be carried out in areas designated as economically distressed by the Federal Government or by any State.

* * * * *

(b) * * *

(3) Furnish, at the discretion of HUD, such other security as may be deemed appropriate by HUD in making such guarantees. Such other security shall be specified in the contract entered into pursuant to paragraph (b)(1) of this section.

* * * * *

43. Amend § 570.902 as follows:

- a. Revise the section heading, the introductory text, and paragraph (a); and
- b. Remove and reserve paragraph (b) and remove paragraph (c);

The revisions read as follows:

§ 570.902 Review for timely performance and continuing capacity for timely performance.

HUD will review the rate of disbursement of each entitlement, HUD-administered small cities, non-entitlement counties in the State of Hawaii, and Insular Areas grant quarterly to determine whether each recipient is carrying out its CDBG-assisted activities in a timely manner and whether it has the continuing capacity to do so.

(a) *Entitlement recipients, Insular Areas, and Non-entitlement CDBG grantees in Hawaii.*

(1) The period of performance is defined at § 570.3.

(2) Based on the sum of draw vouchers both submitted and completed in the designated online system during the reporting quarter, HUD will identify each grant as:

(i) *Slow Spender.* Slow Spender means the grantee is disbursing ten percent less than the monthly pace required to fully expend the grant during the period of performance.

(ii) *On Pace.* On Pace means the grant's disbursement rate exceeds Slow Spender and may be a sufficient rate to fully disburse the grant during the period of performance.

(iii) *Ready to Close.* The grant has reached the end of the period of performance (phase 1).

(iv) *First Year.* This is a new grant and HUD will not report performance publicly for the origin year of a grant.

(3) If a grantee is not spending at a pace to disburse an entire grant during the period of performance (phase 1), HUD will evaluate the grantee's capacity and will provide technical assistance to improve timely performance.

(4) Absent contrary evidence satisfactory to HUD, HUD will consider an insular area, an entitlement recipient, or a non-entitlement CDBG grantee in Hawaii to be failing to carry out its CDBG activities in a timely manner and to lack continuing capacity to carry out activities in a timely manner if three or more of its grants are designated Slow Spender in each quarter during four consecutive calendar quarters.

(5) In determining appropriate corrective actions or sanctions, HUD will consider:

(i) A grantee's demonstration, to HUD's satisfaction, that the lack of timeliness or capacity has resulted from factors beyond the grantee's reasonable control.

(ii) The likelihood that the recipient will improve its disbursement rate for the majority of its non-First-Year open grants to On Pace within 120 days. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its subrecipients for specific activities at the time the finding is made and other relevant information.

* * * * *

44. Amend § 570.910 by revising paragraph (b)(5) and adding a paragraph (c) to read as follows:

§ 570.910 Corrective and remedial actions.

* * * * *

(b) * * *

(5) Advise the recipient to reimburse with non-Federal funds its program account or letter of credit in any amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements;

* * * * *

(c) *Voluntary grant reductions.* A recipient may elect to request a voluntary grant reduction from a current or future year's allocation of funds in lieu of reimbursing its grant under paragraph (b)(5) of this section. A request for a voluntary grant reduction must be signed by the jurisdiction's chief elected official. In its request, the recipient must waive its right to a hearing pursuant to § 570.913.

PART 1003 – COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

45. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

46. Amend § 1003.4 by adding in alphabetical order a definition for “Activity delivery costs” to read as follows:

§ 1003.4 Definitions.

* * * * *

Activity delivery costs means the allowable costs of work performed by a recipient or subrecipient in carrying out specific activities eligible under §§ 1003.201 through 1003.204.

The cost principles at 2 CFR part 200, subpart E, must be used in determining the allowability of the costs.

* * * * *

47. Amend § 1003.201 by revising the section heading and paragraphs (a), (c) introductory text, and (m) and adding paragraphs (p), (q), and (r) to read as follows:

§ 1003.201 Eligible activities.

* * * * *

(a) *Acquisition.* Acquisition in whole or in part by the grantee, or other public or private nonprofit entity, by purchase, long-term lease (defined as 15 years or more), donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 1003.207.

* * * * *

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in §1003.207(a), carried out by the grantee or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. [However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or disabled persons to publicly owned and privately owned buildings, facilities, and improvements

including those provided for in § 1003.207(a)(1).] Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving ICDBG assistance. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in § 1003.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; domestic violence shelters; halfway houses for run-away children, drug offenders or parolees; group homes for individuals with intellectual disabilities and temporary housing for disaster survivors, including those impacted by climate-related events. In certain cases, nonprofit entities and subrecipients including those specified in §1003.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph (c) are subject to the following policies in paragraphs (c)(1) through (3) of this section:

* * * * *

(m) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out specific eligible neighborhood revitalization or economic development activities. General administrative and operating costs of a public or nonprofit entity are not eligible under this paragraph. Capacity building for private or public entities (including grantees) for other purposes may be eligible as a planning cost under § 1003.205.

* * * * *

(p) *Tornado safe shelters.* ICDBG funds may be used by the recipient or provided as loans or grants to non-profit and for-profit entities, including owners of manufactured housing communities, for the construction or improvement of tornado-safe shelters for manufactured housing residents in accordance with section 105(a) of the Act. Activities pursuant to this

paragraph may be located only in a neighborhood (including a manufactured housing community) that-

(1) Contains at least 20 manufactured housing units within such proximity to the shelter that the shelter is available to the resident in the event of a tornado,

(2) Consists predominantly of persons of low and moderate income

(3) Is located within a State in which a tornado has occurred during the fiscal year for which with amounts to be used were made available or the preceding 3 fiscal years, as determined by the Secretary in consultation with the Administrator of the Federal Emergency Management Agency.

(q) *Essential repairs and operating expenses.* ICDBG funds may be used for activities necessary to make essential repairs and pay operating expenses necessary to maintain the habitability of housing units (including abandoned or blighted properties) acquired through tax foreclosure proceedings (also known as In Rem) for up to five years to prevent abandonment or deterioration of housing units located in primarily low- and moderate-income neighborhoods.

(r) *Assistance to mixed-use property.* ICDBG funds may be used to carry out eligible activities in mixed-use properties so long as the ICDBG recipient expends funds only on the eligible use in that property. For purposes of this section, the term “Mixed-use property” means a property containing multiple uses, at least one of which must be eligible to be assisted with ICDBG funds.

48. Amend § 1003.202 by revising paragraph (a) introductory text to read as follows:

§ 1003.202 Eligible rehabilitation and preservation activities.

(a) Types of buildings and improvements eligible for rehabilitation or reconstruction assistance. ICDBG funds may be used to finance the rehabilitation and reconstruction of:

* * * * *

49. Amend § 1003.203 by revising paragraph (b) to read as follows:

§ 1003.203 Special economic development activities.

* * * * *

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, loan participations, technical assistance, and other forms of support (including use of pass-through financing structures), for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in §1003.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the grantee shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, considering the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The grantee shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the grantee or through a subrecipient.

* * * * *

50. Amend § 1003.206 by revising the section heading and the introductory text to read as follows:

§ 1003.206 Program administrative costs.

ICDBG funds may be used for the payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part. No more than 20 percent of the sum of any grant plus program income received shall be expended for activities described in this section and in § 1003.205. This does not include staff and overhead costs directly related to carrying out activities eligible under §§ 1003.201 through 1003.204, since those costs are eligible as part of such activities. These costs are activity delivery costs as defined in § 1003.4. In

addition, technical assistance costs associated with developing the capacity to undertake a specific funded activity are also not considered program administration costs. These costs must not, however, exceed 10 percent of the total grant award.

* * * * *

51. Amend § 1003.208 as follows:

- a. Revise paragraphs (b)(1) introductory text and (b)(1)(i) and (ii);
- b. Remove the text “Bureau of the Census” and add in its place “Census Bureau’s” in paragraph (b)(2) introductory text;
- c. Add paragraph (b)(5);
- d. Remove “, upon completion,” from the first sentence of paragraph (c) introductory text; and
- e. Revise paragraphs (c)(1)(i) and (ii), (c)(2), and (d).

The revisions and addition read as follows:

§ 1003.208 Criteria for compliance with the primary objective.

* * * * *

(b) * * *

(1) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. The activity must meet one of the following tests:

(i) Benefit at least one of the following clientele who are generally presumed to be principally low and moderate income persons: abused children, survivors of domestic violence, elderly persons, adults meeting the Census Bureau’s Current Population Reports definition of “severely disabled,” homeless persons, illiterate adults (adults unable to read and write in English and in their first language, if their first language is not English), persons living with AIDS, migrant farm workers, persons who meet the Federal poverty guidelines, persons insured by Medicaid; or

(ii) Require information on family size and income that demonstrates that at least 51 percent of the clientele are persons whose family income does not exceed the low- and moderate-income limit; or

* * * * *

(5) The following kinds of activities may not qualify under this paragraph (b): activities that provide benefits to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low- and moderate-income persons to be considered is the creation or retention of jobs, except as provided in paragraph (b)(4) of this section.

(c) * * *

(1) * * *

(i) The assistance is for an eligible activity to reduce the development cost of the substantial rehabilitation of (as defined at 24 CFR 5.100), conversion of a nonresidential structure to, or new construction of, a multifamily, non-elderly rental housing project;

(ii) At least 20 percent of the units will be occupied by low- and moderate-income households at affordable rents; and

* * * * *

(2) When ICDBG funds are used for housing services eligible under §1003.201(j), if the housing for which the services are provided is to be occupied by low-and moderate-income households.

(d) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the full-time equivalent jobs will be held by, or made available to, low- and moderate-income persons. For purposes of determining whether a job is held by or made available to a low or moderate income person, the person may be presumed to be a low or moderate income person if: he/she resides within a census tract where not less than 70 percent of the residents have incomes at or below 80 percent of the area median; or, if he/she resides in a

census tract designated as economically distressed by the Federal Government; or, if the assisted business is located in and the job under consideration is to be located in such a tract or area. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by ICDBG funds. Where ICDBG funds are used to pay for the staff and overhead costs of a CBDO under the provisions of §1003.204 making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one-year period.

(1) For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs will be held by, or made available to, low- and moderate-income persons.

(2) For an activity that retains jobs, the grantee must document that the jobs would be lost without the ICDBG assistance and that at least one of the following conditions applies with respect to at least 51 percent of the jobs at the time the ICDBG assistance is provided:

(i) The job is known to be held by a low- or moderate-income person; or

(ii) The job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low- or moderate-income person upon turnover.

(3) Jobs will be considered to be available to low- and moderate-income persons only if:

(i) The assisted business does not require as a prerequisite special skills that can only be acquired with substantial training or work experience or education beyond high school or the business agrees to hire unqualified persons and provide training; and

(ii) The grantee and the assisted business take actions to ensure that low- and moderate-income persons receive first consideration for filling such jobs.

* * * * *

52. Amend § 1003.506 by revising paragraph (a) introductory text to read as follows:

§ 1003.506 Reports.

(a) *Status and evaluation report.* Grantees shall submit a status and evaluation report on previously funded open grants 90 days after the end of the grantee’s Tribal program year, or 90 days after the end of the Federal fiscal year if a grantee’s Tribal program year is the same as the Federal fiscal year, and at the time of grant close-out. The report shall address the following areas:

* * * * *

§ 1003.602 [Amended]

53. Amend § 1003.602 in paragraph (h)(2)(ii) by removing “49 CFR 24.2(g)(2)” and adding in its place “49 CFR 24.2(a)(9)(ii)”.

54. Amend § 1003.606 by revising paragraph (d)(1)(i) to read as follows:

§ 1003.606 Conflict of interest.

* * * * *

(d) * * *

(1) * * *

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict (public disclosure is considered a combination of any of the following: publication on the grantee’s website, including social media; electronic mailings; media advertisements; public service announcements; and display in public areas such as libraries, grocery store bulletin boards, and neighborhood centers), evidence of the public disclosure, and a description of how the public disclosure was made; and

* * * * *

Principal Deputy Assistant Secretary
for Community Planning and Development

Dominique Blom
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[BILLING CODE 4210-67]

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